TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 94

MOTHER LODE COALITION MINES COMPANY,
PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED MAY 19, 1942.

CERTIORARI GRANTED JUNE 8, 1942.

SUPREME COURT OF THE UNITED STATES

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INDEX.

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—1372

Docket Entries.

DOCKET No. 98500 1

MOTHER LODE COALITION MINES COMPANY,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

APPEARANCES:

For Taxpayer: PAUL E. SHORB.

For Comm'r: CONWAY KITCHEN.

1939 2

May 12—Petition received and filed. Taxpayer notified. (Fee paid.)

May 12—Copy of petition served on General Counsel.

May 15—Request for circuit hearing in New York City filed by taxpayer. 5/15/39 copy served.

June 8—Answer filed by General Counsel.

June 15—Copy of answer served on taxpayer. New York City Calendar.

1940

Mar. 13—Hearing set April 29, 1940, New York City. 3

Apr. 30—Hearing had before Mr. Murdock on the merits. Submitted. Briefs due 6/14/40; Reply Brief due 6/29/40.

May 10—Transcript of hearing 4/30/40 filed.

June 14—Brief filed by taxpayer.

June 14—Brief filed by General Counsel.

June 15—Copy of brief served on General Counsel.

June 29—Memorandum reply to respondent's brief filed by taxpayer.

Aug. 20—Findings of fact and opinion rendered, Murdock, Div. 3. Decision will be entered for the respondent.

Aug. 26—Decision entered, J. E. Murdock, Div. 3.

Sept. 19—Motion to vacate decision and modify the findings of fact and opinion of Board or for further hearing to supplement and enlarge the record filed by taxpayer. 9/21/40 Denied.

Sept. 19—Motion for review by the Full Board of the decision and report of the division, filed by taxpayer.

Sept. 24—Order denying Review by the Board, entered.

Sept. 26—Supersedeas bond in the amount of $6,951.14 approved and ordered filed.

5 Sept. 26—Petition for review by United States Circuit Court of Appeals, Second Circuit, with assignments of error filed by taxpayer.

Sept. 26—Proof of service filed by taxpayer.

1941

Jan. 21—Motion for extension to April 1, 1941 to complete and transmit the record filed by taxpayer.

Jan. 21—Order enlarging time to April 1, 1941 to complete and transmit the record, entered.

Mar. 28—Motion for extension of time to May 1, 1941, to
6 complete and transmit the record filed by taxpayer.

Mar. 28—Order enlarging time to May 1, 1941 to complete and transmit the record, entered.

Apr. 28—Motion for extension of time to June 1, 1941 to prepare and transmit the record filed by taxpayer.

Apr. 28—Order enlarging time to June 2, 1941, to prepare and transmit the record, entered.

May 29—Motion for extension of time to July 1, 1941 to prepare and transmit the record filed by taxpayer.

May 29—Order enlarging time to July 1, 1941 to prepare and transmit the record, entered.

June 27—Motion for extension of time to July 21, 1941, to prepare and transmit the record, filed by taxpayer.

June 27—Order enlarging time to July 21, 1941 to prepare and transmit the record, entered.

July 11—Agreed statement of evidence lodged.

July 11—Agreed praecipe for record filed—with proof of service thereon.

July 12—Agreed statement of evidence approved and ordered filed.

Petition. 8

(Filed May 12, 1939.)

UNITED STATES BOARD OF TAX APPEALS

DOCKET No. 98500

[SAME TITLE]

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (SN-IT-1/LAL-90D) dated February 18, 1939, and as a basis of its proceeding alleges as follows: 9

1. The petitioner is a corporation created under the laws of the State of Delaware with its principal office at 120 Broadway, New York, N. Y. The return for the period here involved was filed with the Collector of Internal Revenue for the Second District of New York.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on February 18, 1939.

3. The taxes in controversy are income taxes for the calendar year 1935 and in the amount of $3,475.57.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The respondent, in determining petitioner's taxable net income for the year 1935, erred in disallowing as a deduction percentage depletion in the sum of $25,276.88.

(b) The respondent erred in determining that petitioner had failed to elect that the depletion allowance for the year
11 1935 in respect of its mining property shall be computed with regard to percentage depletion.

(c) The respondent erred in determining that petitioner was entitled to no depletion allowance for the year 1935 in respect of its mining property.

5. The facts upon which the petitioner relies as the basis of this proceeding, are as follows:

(a) Petitioner during the years 1933, 1934 and 1935 owned, and still owns, certain mining property located at or near Kennecott, Alaska. During the years 1933, 1934 and 1935 petitioner conducted its business with net profits
12 resulting in 1933 and 1935 and a loss in the year 1934.

(b) Pursuant to the provisions of Section 114(b)(4), Revenue Act of 1932, petitioner elected in its 1933 Federal income tax return to have the depletion allowance for its mining property for the year 1933 and all subsequent taxable years, computed with reference to percentage depletion. In its 1934 Federal income tax return, petitioner reported no net income but, on the contrary, a loss even without any depletion deduction of any kind. No statement was made in said return with respect to depletion. No depletion was allowable petitioner for the year 1934 on a cost basis or on a percentage depletion basis.

(c) Petitioner's Federal income tax return for the year 1935 reported a profit and net income and stated (1) that it had elected percentage depletion for 1933 and thereafter, and (2) that it was deducting percentage depletion for 1935 and all future years. The depletion allowance for the year 1935 to which petitioner is entitled on the percentage basis, amounts to $25,276.88. No depletion would be allowable to petitioner for the year 1935 on a cost basis.

(d) Petitioner avers that it elected, as required by law, to have its depletion allowance for its mining property for the year 1935 computed with reference to percentage de- 14
pletion and that accordingly it is entitled to percentage depletion deduction for the year 1935 in the sum of $25,276.88.

Wherefore, the petitioner prays that this Board may hear the proceeding and determine:

(a) That petitioner, pursuant to the applicable statute, elected to have its depletion allowance for its mining property for the calendar year 1935 computed with reference to percentage depletion;

(b) That in determining petitioner's taxable net income 15
for the calendar year 1935, it is entitled to a deduction of $25,276.88 on account of percentage depletion for said year;

(c) That there is no deficiency in tax due or owing from petitioner for the calendar year 1935;

(d) Such other and further relief as the nature of the case may require.

(Signed) Paul E. Shorb,
701 Union Trust Building,
Washington, D. C.
Counsel for Petitioner.

State of New York,
County of New York, ss.:

R. C. Kluqesscheid, being duly sworn, says that he is the Secretary of Mother Lode Coalition Mines Company, the petitioner above named, and that he is duly authorized to verify the foregoing petition; that he has read the foregoing petition and is familiar with the statements contained therein, and that the statements contained therein are true except those stated to be upon information and belief, and those he believes to be true.

17 Original signed by

R. C. Kluqesscheid.

Subscribed and sworn to before me this 10th day of May, 1939.

E. W. Schwarz,
Notary Public.

Exhibit "A."

SN-IT-1

Treasury Department
18 Internal Revenue Service

February 18, 1939

Second New York Division

Mother Lode Coalition Mines Company,
120 Broadway,
New York, New York.

Sirs:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1935 discloses a deficiency of $3,475.57 as shown in the statement attached.

19

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to Revenue Agent in Charge, 90 Church St., New York, N. Y. for the attention of LAL-90D. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

20

Respectfully,

GUY T. HELVERING,
Commissioner,

By

(sgd.) C. R. KRIGBAUM,
Internal Revenue Agent in Charge.

21

Enclosures:

Statement.
Form of Waiver.

STATEMENT.

Mother Lode Coalition Mines Company,
120 Broadway,
New York, New York.

Tax Liability for Taxable Year Ended December 31, 1935.

	Liability	Assessed	Deficiency
Income tax	$12,902.78	$9,427.21	$3,475.57

In making this determination of your income tax liability, careful consideration has been given to the reports
23 of examination dated December 31, 1936 and January 11, 1939, and to your protest dated January 27, 1939.

Adjustment to Net Income

Net income reported in revenue agent's report dated December 31, 1936, to which you have agreed	$68,561.55
Unallowable deductions and additional income:	
(a) Percentage depletion	25,276.88
24 Net income adjusted	$93,838.43

Explanation of Adjustment

(a) This office holds that under section 114(b)(4) of the Revenue Act of 1934 a new election of the basis for computing depletion is required and that the failure on your part to make an affirmative election in 1934 is in the terms of the Statute an election to compute depletion without reference to percentage depletion. The method of computing depletion, having become fixed at the time of filing the 1934 return, may not thereafter be changed in 1935. Since the allowable cost basis of depletable assets, plus the cap-

25

italized development costs, was fully recovered through a cost basis depletion by 1925, it follows that no further depletion is allowable.

Computation of Tax
1935

Net income as adjusted.....		$93,838.43
Income tax at 13 3/4 percent.....		$12,902.78
Total income tax.....		$12,902.78
Income tax assessed:		
Original, Account No. 406072.....	$8,726.58	
Additional, Feb., 1937, list, Account No. 520056.....	700.63	9,427.21
Deficiency of income tax.....		$ 3,475.57

26

Answer.

(Filed June 8, 1939)

UNITED STATES BOARD OF TAX APPEALS.

DOCKET No. 98500

27

[SAME TITLE]

COMES NOW the Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and in answer to the petition filed herein, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the taxes in controversy are income taxes for the calendar year 1935, and denies the remaining allegations contained in paragraph 3 of the petition.

4. (a), (b) and (c) Denies the Commissioner erred as alleged in subparagraphs (a), (b) and (c) of paragraph 4 of the petition.

5. (a) Admits that petitioner during the years 1933, 1934 and 1935 owned, and still owns, certain mining property located at or near Kennecott, Alaska. Admits that during the years 1933, 1934 and 1935 petitioner conducted its business with net profits resulting in 1933 and 1935, and denies the remaining allegations contained in subparagraph (a) of paragraph 5 of the petition.

(b) For lack of information from which to form a belief,
29 denies the allegations contained in subparagraph (b) of paragraph 5 of the petition.

(c) Admits that petitioner's Federal income tax return for the year 1935 reported a profit and net income, and denies the remaining allegations contained in subparagraph (c) of paragraph 5 of the petition.

(d) Denies the allegations contained in subparagraph (d) of paragraph 5 of the petition.

Denies generally and specifically each and every allegation contained in the petition not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the petitioner's appeal
30 be denied and the Commissioner's determination be sustained.

J. P. Wenchel,
ECA
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:
E. O. Hanson,
Division Counsel.
Allen T. Akin,
Special Attorney,
Bureau of Internal Revenue.
jpm 6-5-39

Promulgated August 20, 1940.

UNITED STATES BOARD OF TAX APPEALS.

DOCKET NO. 98500.

[SAME TITLE]

1. DEDUCTION—PERCENTAGE DEPLETION—ELECTION.—An election to take percentage depletion for 1933 and subsequent years does not carry over for 1934, since section 114 (b) (4) of the Revenue Act of 1934 required a new election.

2. *Id.*—An amended return for 1934 filed years after the 32
1934 return was due is not a "first return" within the meaning of section 114 (b) (4) of the Revenue Act of 1934.

3. *Id.*—The 1935 return is likewise not a "first return" where the property was owned during 1934, a return was required for that year, and it does not appear that the taxpayer would not have been entitled to a percentage depletion deduction for 1934.

For Petitioner: PAUL E. SHORB, ESQ.

For Respondent: CONWAY N. KITCHEN, ESQ.

The Commissioner determined a deficiency of $3,475.57 in income taxes for the calendar year 1935. The sole ques- 33
tion for decision is whether or not the petitioner is entitled to a deduction in the amount of $25,276.88 for that year for percentage depletion upon its copper mining properties, under section 114 (b) (4) of the Revenue Act of 1934.

Findings of Fact.

The petitioner is a corporation which was organized in 1919 under the laws of the State of Delaware. Its principal offices were in New York, New York. It filed its income tax return for the taxable year with the collector of internal revenue for the second district of New York. It reported net income upon that return after deducting

$25,276.88 for percentage depletion. The return contained a statement as follows:

> Under the provisions of Section 114 (b) (4) of the Revenue Act of 1932 the taxpayer elected to deduct depletion on the percentage basis for the year 1933 and thereafter.

The following facts were stipulated:

> Petitioner during the years 1933, 1934, and 1935 owned, and still owns, certain copper mining property located at or near Kennecott, Alaska. Petitioner ac-
> 35 quired said mining property in 1919. During the years 1933, 1934, and 1935, petitioner was engaged in the business of mining and selling copper.
>
> During the year 1934, petitioner's property was shut down and petitioner did not mine any of its property during that year. Petitioner did, however, sell in 1934 certain copper which it had on hand and which had been mined in prior years.
>
> Petitioner had a profit from its mining operations in 1935 and reported a net income of $63,466.00 in its Federal income tax return for that year.
>
> In all returns of petitioner for years subsequent to 1935, it claimed depletion on the percentage basis.
>
> The petitioner was not entitled to any deduction for
> 36 depletion on a cost basis, for its mining property at Kennecott, Alaska, for the years 1933, 1934, and 1935.
>
> If petitioner is entitled to percentage depletion for the year 1935 under the provisions of Section 114 (b) (4) of the Revenue Act of 1934, the amount thereof is $25,276.88, as claimed by petitioner in its 1935 Federal income tax return; and, in such event there is no deficiency due from or refund due this petitioner for the year 1935.

The petitioner, on its Federal income tax return for 1933, deducted for depletion upon the percentage basis and stated: "Under the provisions of Section 114 (b) (4) of the Revenue Act of 1932 the taxpayer elects to deduct de-

pletion on the percentage basis for the year 1933 and thereafter."

The petitioner filed its income tax return for 1934 on March 15, 1935, showing the following items of income and deductions:

GROSS INCOME.

1. Gross Sales		$81,887.37	
2. Less Cost of Goods Sold:			
(a) Inventory at beginning of year	$58,543.04		
(c) Miscellaneous costs	6,570.19		38
(d) Total	$65,113.23		
(e) Less inventory at end of year	10,916.22		
		54,197.01	
3. Gross Profit from Sales		$27,690.36	
7. Interest		42.26	
8. Rents		132.50	
14. Total Income			$27,865.12

DEDUCTIONS. 39

19. Taxes	$7,291.44	
25. Other Deductions:		
N. Y. General Expense	15,029.36	
Selling Commission	1,217.75	
Delivery Expense on Refined Copper	1,854.89	
Shutdown Expense	41,369.94	
26. Total Deductions		$66,763.38
27. Net Income		$38,898.26

Item 19. Taxes.—Was explained in schedule E as follows:

State of Delaware	$6,275.00
Capital Stock Tax	1,000.00
Territory of Alaska	15.00
Federal Check Tax	1.44
	$7,291.44

The return contains no further explanation of the items of income and deductions. No deduction of any kind for de-
41 pletion was claimed on that return. The treasurer of the petitioner prepared that return after reading the instructions attached thereto and section 114 (b) (4) of the Revenue Act of 1934. He believed that the election to take percentage depletion made on the 1933 return was still binding, the petitioner would not benefit from and was not entitled to any deduction for percentage depletion for 1934, and consequently, he made no reference to percentage depletion on the 1934 original return. The Commissioner made no adjustments for 1934.

A revenue agent's report dated January 19, 1939, first advised the petitioner that its claim for percentage deple-
42 tion for 1935 was to be disallowed. The petitioner filed a protest on January 27, 1939. The Commissioner mailed the notice of deficiency on February 18, 1939, disallowing the percentage depletion deduction for 1935 and explained:

> This office holds that under Section 114 (b) (4) of the Revenue Act of 1934 a new election of the basis for computing depletion is required and that the failure on your part to make an affirmative election in 1934 is in the terms of the Statute an election to compute depletion, without reference to percentage depletion. The method of computing depletion, having become fixed at

the time of filing the 1934 return, may not thereafter be changed in 1935. Since the allowable cost basis of depletable assets, plus the capitalized development costs was fully recovered though a cost basis depletion by 1925, it follows that no further depletion is allowable.

The petition in this proceeding was filed on May 12, 1939. The petitioner on May 29, 1939, filed an amended return for 1934 which was a duplicate of the original except that it contained a statement as follows:

Notice. 44

This taxpayer elects percentage depletion for this and all subsequent years thus reiterating its election of percentage depletion made in its 1933 return for 1933 and all subsequent years which included this year of 1934.

Opinion.

MURDOCK: The petitioner makes three arguments to support its claim for a percentage depletion deduction for 1935. One is that its election made on its 1933 return under the Revenue Act of 1932 was a continuing valid election to claim percentage depletion under section 114 45
(b) (4) of the Revenue Act of 1934. Another is that its amended return for 1934 was timely filed and constituted the "first return" under the Revenue Act of 1934, so that the election made therein to take percentage depletion for 1934 and subsequent years was an effective election under section 114 (b) (4) of the Revenue Act of 1934. The other argument is that the 1935 return was the "first return" within the meaning of section 114 (b) (4), since no depletion deduction upon a percentage basis was allowable for 1934.

The Board has held that the 1934 Act, in section 114 (b) (4)[1], required a new election by taxpayers as to whether or not they desired percentage depletion for 1934 and subsequent years. *Dorothy Glenn Coal Mining Co.*, 38 B. T. A. 1154; *C. H. Mead Coal Co.*, 38 B. T. A. 1163; reversed on other grounds, 106 Fed. (2d) 388. Thus the election made by this taxpayer in its return for 1933 does not constitute the election required by the Revenue Act of 1934.

The Supreme Court has held, in *Haggar Co.* v. *Helvering*, 308 U. S. 389, that the term "first return," as used in section 215 (f) of the National Industrial Recovery Act,
47 "means a return for the first year in which the taxpayer exercises the privilege of fixing its capital stock value for tax purposes, and includes a timely amended return for that year." The timely amended return in that case was filed within the time fixed by statute (and an extension thereof) for filing the return. The Court was not influenced by a later regulation providing that the value declared in the original return could not be changed by an amended return filed within the statutory limits. There is a reference in the opinion to *Mead Coal Co.* v. *Commissioner*, 106 Fed. (2d) 388, wherein the Circuit Court of Appeals for the Fourth Circuit held that an amended return for 1934, elect-
48

[1] SEC. 114. BASIS FOR DEPRECIATION AND DEPLETION.

* * * * * * *

(b) BASIS FOR DEPLETION.—

(4) * * * A taxpayer making his first return under this title in respect of a property shall state whether he elects to have the depletion allowance for such property for the taxable year for which the return is made computed with or without regard to percentage depletion, and the depletion allowance in respect of such property for such year shall be computed according to the election thus made. If the taxpayer fails to make such statement in the return, the depletion allowance for such property for such year shall be computed without reference to percentage depletion. The method, determined as above, of computing the depletion allowance shall be applied in the case of the property for all taxable years in which it is in the hands of such taxpayer, or of any other person if the basis of the property (for determining gain) in his hands is, under section 113, determined by reference to the basis in the hands of such taxpayer, either directly or through one or more substituted bases, as defined in that section.

ing percentage depletion and filed before the return for 1935 was due, was sufficient to support a deduction of percentage depletion for 1934. See also *Del Mar Addition* v. *Commissioner*, ...Fed. (2d) ....(7/8/40). The Board, in *William B. Scaife & Sons Co.*, 41 B. T. A. 278, interpreted the *Haggar* decision as recognizing only an amended return filed within the time for filing the return for the period and held that one filed thereafter was ineffective. The Circuit Court of Appeals for the Ninth Circuit, in *Riley Investment Co.* v. *Commissioner*, 110 Fed. (2d) 655, made a similar interpretation of the *Haggar* decision and expressed disapproval of the test of timeliness given in the 50
Mead case. The petitioner in the *Riley* case was engaged in mining gold. It had exhausted its cost basis for depletion and claimed no deduction for depletion on its return for 1934. It filed an amended return on March 3, 1936, electing and claiming percentage depletion. The court held that the amended return was not timely and did not entitle the taxpayer to percentage depletion. The opinion contains a discussion of several of the points urged by the present petitioner. The Board held in *Walter C. Hill*, 41 B. T. A. 245, that an amended return, filed after the return for the next year was due, was ineffective for making an election of percentage depletion under section 114 (b) (4). 51

The amended return of the present petitioner for 1934 was filed on May 29, 1939, more than four years after the time for filing the return for 1934, more than four months after it learned that its percentage depletion for 1935 might be disallowed, more than three months after the deficiency notice for 1935 was mailed, and after the petition in this case was filed. It was not timely filed and was not the first return for 1934 within the meaning of section 114 (b) (4). *Riley Investment Co.* v. *Commissioner, supra; Walter C. Hill, supra;* Cf. *William B. Scaife & Sons Co.*,

supra. The conclusion is also supported by *Mead Coal Co.* v. *Commissioner, supra.*

The remaining argument of the petitioner is that its return for 1935 was its "first return" within the meaning of section 114 (b) (4) of the Revenue Act of 1934, since it was the first return under that provision in which it was entitled to any deduction for percentage depletion. This argument is based upon the conclusion that no deduction for percentage depletion was allowable for 1934. The petitioner merely points to the net loss for 1934. The net loss shows that a
53 deduction for percentage depletion in 1934 would not have reduced taxes for 1934 but it does not show that such a deduction was not allowable under the statute.

Section 114 (b) (4) allowed a deduction of 15 per centum "of the gross income from the property during the taxable year" but not to "exceed 50 per centum of the net income * * * from the property" excluding depletion. The terms "gross income from the property" and "net income from the property" are not necessarily synonymous with the terms "Gross Income" and "Net Income" appearing on the return. Cf. *Consumers Natural Gas Co.*, 30 B. T. A. 1263; affd., 78 Fed. (2d) 161; certiorari denied, 296 U. S.
54 634. See Regulations 86, article 23 (m)-1, defining gross and net income from the property. The record shows that the petitioner had gross income from the property which would support a deduction for percentage depletion and it fails to show that there was no net income from the property for 1934. Not all deductions shown upon a return are necessarily deductible in determining net income from the property, since only those are deductible which are attributable or properly allocable to the mineral property and process upon which the depletion is claimed. Regulations 86, art. 23 (m)-1. Cf. *Vinton Petroleum Co. of Texas*, 28 B. T. A. 549; affd., 71 Fed. (2d) 420; *Consumers Natural Gas Co., supra; Ambassador Petroleum Co.*, 28 B. T. A.

868; *Houston Production Co.* v. *United States*, 4 Fed. Supp. 715; *Brea Canon Oil Co.*, 29 B. T. A. 1134; affd., 77 Fed. (2d) 67; certiorari denied, 296 U. S. 604; *Greensboro Gas Co.*, 30 B. T. A. 1362; affd., 79 Fed. (2d) 701; certiorari denied, 296 U. S. 639.

The record does not show whether or not the petitioner had other properties in 1934, or what part of the taxes might be deductible in computing net income from the property upon which depletion is being claimed. The same is true of the item "N. Y. General Expense." "Selling Commission" and "Delivery Expense on Refined Copper" 56 are not further explained. We may not assume, in the absence of proof, that those items are deductible in their entirety, or in any particular part, in the computation of "net income from the property." The same and more may be said in regard to the large item of "Shutdown Expense." The meager description given of that item strongly suggests that it is not all deductible in determining net income from the property for 1934. The copper sold in 1934 was mined previously. Should the entire shutdown expense be charged against 1934 sales? Did the petitioner refine its copper, and, if so, what allocation of income and deductions would that require.

57 The petitioner has failed to show that it would not have been entitled to any percentage depletion deduction for 1934 under section 114 (b) (4) and the main support of its third argument must fall. Furthermore, there is language in the *Dorothy Glenn Coal Mining Co.* case, *supra*, and in *Kehoe-Berge Coal Co.*, 41 B. T. A. 282, which may mean that the election must be made for 1934 and that no election made in a later return will do, where the property was owned in 1934 and an election could have been made upon the return for that year.

The legislative history of the provision and its effect upon taxpayers situated like the present one has been fully

considered and discussed in prior opinions cited herein. Since this petitioner did not make the election required by section 114 (b) (4), it may not have any deduction for percentage depletion for 1935.

Decision will be entered for the respondent.

Decision.

UNITED STATES BOARD OF TAX APPEALS

WASHINGTON

59 DOCKET No. 98500

[SAME TITLE]

Pursuant to the determination of the Board, as set forth in its Findings of Fact and Opinion, promulgated August 20, 1940, it is

ORDERED and DECIDED: That there is a deficiency in income of $3,475.57 for the year 1935.

Entered Aug. 26, 1940.

(Signed) J. E. MURDOCK,
60 Member.

United States Board of Tax Appeals Filed Sep 19 1940
Denied Sep 21 1940 (Signed) J. E. Murdock, Member
U. S. Board of Tax Appeals

61

Motion to Vacate Decision and Modify the Findings of Fact and Opinion of Board, or for Further Hearing to Supplement and Enlarge the Record.

(Filed Sep. 19, 1940)

UNITED STATES BOARD OF TAX APPEALS

DOCKET No. 98500

[SAME TITLE]

Now comes the petitioner by its attorney, Paul E. Shorb, and respectfully moves, 62

(1) That the Board vacate the decision entered in this proceeding and modify the Findings of Fact and Opinion entered August 20, 1940 (42 B. T. A. No. 90); or

(2) That further hearing be granted in this proceeding for the purpose of supplementing and enlarging the record by way of further testimony or stipulation of the parties.

In support of this motion petitioner states:

The sole question involved in the case is whether petitioner is entitled to percentage depletion for the year 1935. The petitioner advanced three grounds in support of its claim. The Board rejected all three. 63

The present motion concerns only the rejection of the *third* point. This third point was that the petitioner was entitled to percentage depletion because, within the meaning of Section 114 (b) (4) of the Revenue Act of 1934, the petitioner's return for 1935 was the "first return", filed under that Act, since the mining property was not operated in 1934 and petitioner having sustained a net loss in that year was not entitled to an allowance for percentage depletion. The petitioner argued that the expression "first return" must mean a return in a year when the taxpayer has net income.

The Board did not decide the validity of this legal contention but ruled against the petitioner by saying that it was not clear from the record that the petitioner was not "entitled to any percentage depletion deduction for 1934 under Section 114 (b) (4) * * *". The Board took the position that the petitioner's expenses and other deductions claimed in its 1934 return might have arisen from other properties or from refining operations, or might be applicable to other years and thus might not be deductible in computing net income for the year 1934 from the property as to which percentage depletion is claimed. Respon-
65 dent did not raise these questions. In so ruling petitioner believes the Board misunderstood the Stipulation (R. 25-26) in this case and other evidence in support of petitioner's argument on this point. Accordingly, for the reasons hereinafter given, the petitioner now moves:

1. *That the Board vacate its decision and modify its findings of fact and opinion entered in this case.* The petitioner submits that the record shows that the mining property in question upon which the petitioner claims an allowance for percentage depletion was the *only* property owned by petitioner, that petitioner was *not* engaged in refining, and that
66 all deductions listed in petitioner's 1934 return were properly allocable to 1934 and to this one mining property.

(a) The case was argued on the basis that the company owned only *one* property. Counsel for respondent did not dispute the fact or suggest the contrary. Counsel for petitioner in presenting the case consistently referred to "the" mine, "the" property. Mr. Dean, in his testimony, referred to the petitioner's "mine" and the "company's property" (R. 31, 32, 34). In preparing the stipulation the singular "property" was intentionally used by petitioner's counsel in order to make the fact clear that the petitioner had only one mine and one depletable property during the years

1933, 1934 and 1935, and mined only one mine or property. The stipulation speaks only of "the" property. (R. 25-26) It is believed respondent's counsel so understood the situation. In any event, petitioner's counsel feels certain that such explanation was made during the negotiations between the parties with respect to the stipulation set out in the Record, pages 25-26.

Further, "Schedule J—depletion" attached to petitioner's income and excess profits tax returns for 1933 contains statement referring to "gross sales of products of the mine" (Ex. 4). Likewise, Exhibit 3, the 1935 income tax 68
return, contains similar statement referring to "gross sales of product of mine".

The record, we submit, fairly supports a finding that petitioner had only one property. Petitioner accordingly moves that the Board so find.

(b) The record is even clearer that the petitioner was *not engaged in refining*. It was stipulated by the parties that during the years 1933, 1934 and 1935, petitioner was engaged in the *business of mining and selling copper* (R. 25). In petitioner's original and amended 1934 income tax returns (Exs. 1 and 2) petitioner's business is stated to be 69
"copper mining"; also as "mining and quarrying". Petitioner's income tax returns for 1933 and 1935 (Exs. 3 and 4) likewise report petitioner's business as that of "copper mining". In those returns the petitioner's total gross income is reported as "gross sales of products of mine". Deductions were taken therein for smelting and refining in determining petitioner's gross income from its *property*, but this means money paid to *others* for refining. The petitioner did no refining itself.

When the parties agree as to the business of the petitioner for these years, which agreement excludes that of refining, petitioner submits the Board should find petition-

er's business to be as stipulated. The stipulation of the parties obviously was drawn with the intent of excluding matters not covered thereby. The tax returns of petitioner for 1933, 1934 and 1935 which are part of the record in this appeal show no depreciation deduction whatsoever. It seems clear that if the petitioner had operated a refinery there would be such a deduction. Further, refining costs, had petitioner operated its own refinery, would be reflected in Item 2 of the Corporation Income and Excess Profits Tax return with reference to the "cost of goods sold". Petitioner's returns for 1933, 1934 and 1935 show no such cost
71 of manufacturing, *i. e.*, refining. The refining cost of petitioner is shown on Schedule J. which is the percentage depletion computation, and such cost is thus shown in petitioner's 1933 and 1935 returns, and establishes "refining" as an expense or item *paid* by petitioner to others, which is deductible, as there shown, from the "gross sales of the products of the mine".

Upon the basis of the present record which, we submit, clearly establishes the fact that petitioner was engaged solely in copper mining, petitioner respectfully moves that the Board vacate and modify its report on this point and affirmatively find that petitioner did not refine its copper
72 and that therefore no "allocation of income and deductions", as suggested in the Board's opinion, is required.

(c) Petitioner further submits that the Board should modify its findings of fact and opinion to show that petitioner had no net income from its mining property in 1934 and was not entitled to deduct an allowance for percentage depletion in that year. Petitioner's return for 1934 (Ex. 1) disclosed a *net loss* of $38,898.26 in that year. Further, Mr. Dean testified that the petitioner had *no income in 1934* or any right to deduct percentage depletion in that year (R. 30, 32). Petitioner's determination has never been controverted or disputed by respondent. Petitioner's 1934

income tax return which reported a *net loss* of $38,898.26 was "reviewed" by respondent and no adjustments were made therein by him (Ex. 1). Thus the respondent, who by statute was charged with the duty of determining petitioner's correct tax liability (Sec. 57, Revenue Act of 1934), approved petitioner's determination that it had no net income in 1934. We submit that the fact that the Company had a net loss in 1934 is proved conclusively by petitioner's 1934 income tax return and by the testimony of the witness, Dean.

The record discloses that all the expense items shown in the petitioner's 1934 return were properly allocable to this 74
one property, and to the year 1934. The Board suggests that such items as "Taxes", "New York General Expense", "Selling Commissions", "Delivery Expenses" should not be charged against this one property, and that "Shut Down Expense" should not in whole be charged to the year 1934. Since the company was engaged solely in mining, and in mining the one property, *all* the company's taxes and expenses, including "New York General Expense", "Selling Commissions", "Delivery Expense", are properly chargeable against this one property in determining whether there was "net income" from the property.

Petitioner's returns for 1933, 1934 and 1935 all contain 75
deductions for "New York General Expense", "Selling Commissions", "Delivery Expense" and "Taxes". The record definitely shows that these items were allowed as deductible expense in these years. A comparison of the 1935 return and figures thereon with the Revenue Agent's reports of January 25, 1937, and January 19, 1939, 90-day statutory deficiency notice, and the Stipulation of the parties in this definitely establishes that the respondent has not questioned the deductibility of such items for either 1933, 1934 or 1935.

Nor does the Board's point as to "Shut Down Expense" stand any better. The question is raised, "Should the entire shut down expense be charged against 1934 sales?". The answer is that the record is conclusive upon that point. At the trial petitioner's return for 1934 (Ex. 1), showing a net loss of $38,898.26, was introduced in evidence. That net loss was arrived at after deducting a number of items, including "Shut Down Expense of $41,369.94". This was the return for the year 1934, and it contained that item as an expense *for that year*. This deduction was never questioned by respondent. No point was raised at the trial,
77 and no objection made.

Petitioner's 1935 return, Exhibit 3, shows "Shut Down Expense" $9,000.15. The Revenue Agent's report of January 25, 1937, for the year 1935, Exhibit 5, shows that of this amount, $7,784.65 was disallowed as a deduction because " * * * the records show that the above amount applicable to the year 1934 was taken as a deduction for the year 1934 * * *". The audit of the 1935 return therefore discloses that the Commissioner considered "Shut Down Expense" and allowed part of the amount claimed for 1935, but disallowed the remainder, because it was "applicable to the year 1934". Thus it is shown that the "Shut
78 Down Expense" item was, during the audit of the 1935 case, considered by the Commissioner and his determination was that part of the item was deductible in 1935 and the balance "applicable" to the year 1934.

For the reasons set forth above we submit the present record clearly establishes the fact that the following deductions claimed by petitioner in its 1934 income tax return are chargeable against petitioner's one property in 1934

in determining whether petitioner had net income therefrom:

Taxes	$7,291.44
New York General Expense	15,029.36
Selling Commissions	1,217.75
Delivery Expense on Refined Copper	1,854.89
	$25,393.44

The Commissioner having determined in petitioner's 1935 case that at least $7,784.65 of said shut down expense was "applicable to the year 1934", there are 1934 *deductions* 80
totaling $33,178.09, which are clearly allocable to petitioner's property, which total exceeds by $5,312.97 petitioner's gross income from its property of $27,865.12, as reflected in its 1934 return. Thus petitioner had a "net loss" from its property in 1934 without giving consideration to petitioner's right to a greater deduction in 1934 on account of "Shut Down Expense". Thus analyzed, we submit the entire record conclusively establishes the fact that petitioner had no net income from its property in 1934, *and therefore no deduction for percentage depletion was allowable in that year.*

With respect to petitioner's 1934 return the Board, as 81
pointed out above, found "The Commissioner made no adjustments for 1934". The return itself shows that it was "reviewed" by Section A, Bureau of Internal Revenue. Under the law, the Commissioner is charged with the duty of such audit and review (see petitioner's brief, page 14). The presumption is that the Commissioner has done his duty and the facts here show that the 1934 return was considered by him and no adjustment made therein. Respondent raised no question on this issue, nor did the 90-day deficiency letter to petitioner from which this appeal was taken. Accordingly, it is submitted the present record establishes *prima facie* the fact that petitioner had no net

income from its property in the year 1934. In establishing a *prima facie* case in support of its contention, petitioner is not required to eliminate all unfavorable possibilities. *Van Vorst* v. *Commissioner*, 22 B. T. A. 632, 635, aff'd 59 F. (2d) 968 (C. C. A. 9). Accordingly, we respectfully urge the Board to modify its findings of fact and opinion in this appeal to show that petitioner had no net income from its property in 1934.

2. If the Board does not see fit to grant the motion under 1, *supra, then the petitioner respectfully moves that*
83 *the Board grant further hearing in this proceeding* for the purpose of enabling the petitioner to supplement and enlarge the present record by testimony or by stipulation of the parties on the facts relating to the points discussed herein. For the reasons stated herein, petitioner believed that the record was clear with respect to these points, and the case was tried upon that basis. In order to avoid injustice and hardship resulting from a misunderstanding as to the scope of the record, it is requested that the Board grant a further hearing in this proceeding so that the parties may have an opportunity to supplement and enlarge the record on these particular issues. We submit the
84 present record clearly justifies the petitioner in making this motion which finds ample support in numerous court decisions. It is elemental that the courts, upon review of decisions of the Board of Tax Appeals, will order a rehearing when necessary to meet the ends of substantial justice. *Chatham Phenix National Bank & Trust Co.* v. *Helvering*, 87 F. (2d) 547 (App. D. C.); and in the exercise of their appellate power the courts have, under varying factual situations remanded cases to the Board for further hearing where the record was not in condition for the court to do justice to all parties or where justice required such action. *Underwood* v. *Commissioner*, 56 F. (2d) 67, 73 (C. C. A. 4); *Virginia-Lincoln Furniture Corporation* v.

Commissioner, 56 F. (2d) 1028 (C. C. A. 4); *Wyoming Investment Co.* v. *Commissioner*, 70 F. (2d) 191 (C. C. A. 10); *Helvering* v. *Edison Securities Corporation*, 78 F. (2d) 85, 90-91 (C. C. A. 4). The equal power of the Board to do full justice to the parties while they are still before it cannot be doubted.

The present case, we submit, falls squarely within the limits of the decision of the United States Circuit Court of Appeals for the Eighth Circuit in *National Lumber & Tie Co.* v. *Commissioner*, 90 F. (2d) 216. In that case the Board had held that upon the evidence submitted by the taxpayer it had failed to establish its contention that certain levee taxes were capital expenditures; also that the taxpayer had failed to show what portion of the taxes were allocable to maintenance or interest charges. There was some evidence in the record which tended to support the taxpayer's contention. The Court held that the Board should have afforded the taxpayer an opportunity of showing the character of the taxes paid by it, and the case was accordingly remanded for further hearing. 86

We submit the Court's reasoning in the above case is directly applicable to the present case and supports the granting of petitioner's motion so that the record may be clarified. See also *Ray W. Torrey Co.* v. *Commissioner*, 84 F. (2d) 659 (C. C. A. 6). As stated by the Court in *Chatham Phenix National Bank & Trust Co.* v. *Helvering*, *supra* (p. 550): 87

> "Running through all the cases cited is the similar determination of the courts that, where it appears that a further hearing would be promotive of justice, the taxpayer should be given the opportunity of amending his pleadings and of offering evidence to show that he suffers through a wrongful determination of his tax liability."

We submit that elementary principles of justice should accord this petitioner an opportunity of presenting the true facts in order that the legal question (an important one) may receive due consideration. The granting of this motion by the Board in the exercise of its sound discretion is consonant with the remedial purposes of the legislation creating the Board of Tax Appeals. *Helvering* v. *Taylor*, 293 U. S. 507, 516.

Respectfully submitted,

89 PAUL E. SHORB,
701 Union Trust Building,
Washington, D. C.,
Counsel for Petitioner.

Petition for Review.

(Filed Nov. 26, 1940.)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

90 B. T. A. Docket No. 98500.

[SAME TITLE]

TO THE HONORABLE JUDGES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT:

Now comes Mother Lode Coalition Mines Company, the petitioner herein, by and through its attorney, Paul E. Shorb, and respectfully shows:

I.

Jurisdiction.

The petitioner on review is a corporation, organized in 1919 under the laws of the State of Delaware with its principal offices at 120 Broadway, New York, New York. The petitioner filed its Federal income tax return for the year 1935 with the Collector of Internal Revenue for the Second District of New York, whose office is located within the jurisdiction of the United States Circuit Court of Appeals for the Second Circuit. The respondent on review is the duly appointed, qualified and acting Commissioner of Internal 92
Revenue, hereinafter referred to as the respondent, appointed and holding his office by authority of the laws of the United States. The petitioner files this petition for review pursuant to the provisions of Section 1141 and Section 1142 of the Internal Revenue Code. The court in which the review of this cause is sought is the United States Circuit Court of Appeals for the Second Circuit.

II.

Nature of Controversy.

The nature of the controversy is as follows: 93

The petitioner during the years 1933, 1934, and 1935 owned and still owns one certain copper mine located at or near Kennecott, Alaska, which was acquired in 1919. During the years 1933, 1934, and 1935 petitioner was engaged in the business of mining and selling copper from said mine. In its Federal income tax return for 1933 petitioner computed and deducted an allowance for depletion on its said mine upon the percentage basis, and in said return petitioner stated:

> "Under the provisions of Section 114(b)(4) of the Revenue Act of 1932 the taxpayer elects to deduct de-

pletion on the percentage basis for the year 1933 and thereafter."

Petitioner was not entitled to a deduction for depletion computed upon any other basis.

Petitioner's said mine was shut down and was not operated in 1934; however in that year petitioner sold certain copper which it had on hand and which had been taken from said mine in prior years. In 1934 petitioner sustained a net loss of $38,898.26 without reference to any allowance for depletion and in its income tax return for that year
95 which reported said net loss, petitioner claimed no depletion deduction. Petitioner had no net income from its mine in 1934 and was not entitled to any deduction for percentage depletion on its said mine and having previously elected percentage depletion for 1933 and subsequent years, which election was still effective, petitioner concluded that no further action was required of it with reference to percentage depletion. Petitioner's 1934 return was reviewed by respondent and no adjustments were made by him.

Petitioner had a profit from operating said mine in 1935 and reported net income of $63,466.00 in its Federal income tax return for that year after deducting $25,276.88 for percentage depletion. In this return petitioner stated that
96 under Section 114(b)(4) of the Revenue Act of 1932 it elected to deduct depletion on the percentage basis for 1933 and thereafter. Petitioner's return for 1935 was the first return filed by it under the Revenue Act of 1934 which reported net income subject to an allowance for percentage depletion.

On February 18, 1939, the respondent mailed to the petitioner a notice of deficiency for Federal income taxes for the calendar year 1935 in the amount of $3,475.57. In his notice of deficiency the respondent stated:

"This office holds that under Section 114(b)(4) of the Revenue Act of 1934 a new election of the basis for

computing depletion is required and that the failure on your part to make an affirmative election in 1934 is in the terms of the statute an election to compute depletion without reference to percentage depletion. The method of computing depletion, having become fixed at the time of filing the 1934 return, may not thereafter be changed in 1935. Since the allowable cost basis of depletable assets, plus the capitalized development costs, was fully recovered through a cost basis depletion by 1925, it follows that no further depletion is allowable."

Respondent accordingly disallowed the deduction for percentage depletion which petitioner had claimed in its 1935 return and determined a deficiency in tax for said year of $3,475.57. 98

On May 12, 1939, the petitioner filed a petition with the United States Board of Tax Appeals for a redetermination of the respondent's determination of deficiency. In its petition petitioner alleged that in its 1933 return it had elected percentage depletion for 1933 and subsequent years; that in 1934 it had no net income subject to percentage depletion, but on the contrary had sustained a net loss and therefore was not entitled to deduct an allowance for percentage depletion for 1934; that petitioner had elected as required by law to have its depletion allowance for its said mine computed with reference to percentage depletion and that it is entitled to percentage depletion for the year 1935. On May 29, 1939, petitioner filed an amended return for 1934 which stated that petitioner elected percentage depletion for 1934 and subsequent years, thus reiterating its prior election. Respondent's answer to the petition was filed on June 8, 1939. 99

The case was tried before the Board on April 30, 1940. On August 20, 1940, the Board promulgated its findings of fact and opinion, (42 B. T. A. 596), wherein it held that the election by the petitioner of percentage depletion in its

return for the year 1933 and subsequent years was not sufficient to entitle the petitioner to percentage depletion for 1935; that the petitioner was required under the 1934 Act to make an election of percentage depletion in its original 1934 return in order to be permitted percentage depletion in 1935; that it had failed to make such election and accordingly was not entitled to an election for percentage depletion for 1935.

The Board also denied the petitioner's contention that since it had no net income in the year 1934, and therefore no right to deduct an allowance for percentage depletion
101 in that year, its return for the year 1934 was not its "first return" in which it could elect percentage depletion within the definition of Section 114(b)(4), Revenue Act of 1934, but that its original return for 1935 in which petitioner elected percentage depletion and reaffirmed its 1933 election of percentage depletion, was the "first return" under the Revenue Act of 1934. On this issue the Board held that the evidence was not sufficient to show that the petitioner had no net income from its said mine in 1934, although the record showed that petitioner had no net income in 1934 subject to an allowance for percentage depletion, which fact was never controverted by respondent, and further, that in any
102 case whether or not the petitioner had any net income in 1934, it was obliged to claim depletion in its original 1934 return in order to be entitled to percentage depletion in the year 1935. On August 26, 1940, the Board entered its decision that there was a deficiency in petitioner's income tax of $3,475.57 for the year 1935.

On September 19, 1940, the petitioner filed with the Board a motion to vacate the decision and modify the findings of fact and opinion of the Board, or for a further hearing permitting it to produce further and additional evidence showing that it had no net income from its said mine for the year 1934, in which case the petitioner's return for 1935

was the "first return" within the definition of Section 114(b)(4), Revenue Act of 1934. Without hearing, this motion was denied by the Board on September 21, 1940. On September 19, 1940, petitioner also filed a motion for review by the Full Board of the Decision and Report of the Division. This motion, without hearing, was also denied on September 24, 1940.

III.
Assignments of Error.

The petitioner avers that in its Findings of Fact, Opinion and Decision the United States Board of Tax Appeals committed the following errors upon which your petitioner relies as the basis of this proceeding. 104

1. The Board of Tax Appeals erred in holding and deciding that there is a deficiency in income tax owing by the petitioner in the amount of $3,475.57 for the year 1935.

2. The Board of Tax Appeals erred in holding and deciding that petitioner is not entitled to a deduction for percentage depletion in determining its taxable income for 1935.

3. The Board of Tax Appeals erred in holding and deciding that the petitioner did not make an election of percentage depletion as required by Section 114(b)(4), Revenue Act of 1934. 105

4. The Board erred in holding and deciding that the election made by petitioner in its Federal income tax return for 1933 was not sufficient to entitled the petitioner to percentage depletion for the year 1935.

5. The Board of Tax Appeals erred in failing to hold that petitioner's election of percentage depletion under Section 114(b)(4), Revenue Act of 1932, for 1933 and subsequent years constituted, under the facts of this case, a

valid and binding election of percentage depletion for 1934 and 1935.

6. The Board of Tax Appeals erred in holding and deciding as a matter of law that Section 114(b)(4), Revenue Act of 1934, required a new election of percentage depletion from petitioner, which under the Revenue Act of 1932, had elected percentage depletion for 1933 and subsequent years.

7. The Board erred in failing and refusing to hold that the election of percentage depletion made by petitioner in its 1933 income tax return was a continuing and valid elec-
107 tion to claim percentage depletion under Section 114(b)(4), Revenue Act of 1934.

8. The Board erred in failing to hold that petitioner's income tax return for 1935 was the "first" return filed under Section 114(b)(4), Revenue Act of 1934, in which petitioner could or was entitled to elect percentage depletion, and that petitioner's election of percentage depletion in its 1935 return constituted, under the facts of this case, a valid election of percentage depletion under Section 114(b)(4), Revenue Act of 1934.

9. The Board of Tax Appeals erred in holding and de-
108 ciding that petitioner's income tax return for 1935 was not its "first return" within the meaning of Section 114(b)(4), Revenue Act of 1934.

10. The Board of Tax Appeals erred in failing to hold that petitioner had no net income from its said mine in 1934, and in failing to hold that petitioner had a net loss from its mine in 1934 as reported by petitioner in its 1934 return.

11. The Board of Tax Appeals erred in failing to hold that petitioner was not entitled to any deduction for percentage depletion for 1934.

12. The Board erred in holding that the record in this case does not show whether or not petitioner had more than one mining property in 1934 or whether or not the deductions claimed by petitioner in its 1934 return are deductible in their entirety in determining the net income from petitioner's property for 1934.

13. The Board of Tax Appeals erred in failing to find and hold that petitioner had only one mining property in 1934.

14. The Board erred in failing to find and hold that petitioner in 1934 was engaged solely in copper mining and was 110
not engaged in refining.

15. The Board of Tax Appeals erred in failing to find and hold that the deductions claimed by petitioner in its 1934 income tax return were deductible in their entirety in computing net income for said year from petitioner's mine upon which depletion is claimed.

16. The Board of Tax Appeals erred in holding that the record failed to show that there was no net income from petitioner's said mine in 1934.

17. The Board of Tax Appeals erred in holding that 111
petitioner had failed to show that it was not entitled to any percentage depletion deduction for 1934 under Section 114(b)(4), Revenue Act of 1934.

18. The Board of Tax Appeals erred in denying petitioner's motion to vacate and modify the Board's Findings of Fact and Opinion, or for further hearing to supplement and enlarge the record.

19. The Board of Tax Appeals erred in refusing to grant petitioner the opportunity and right upon a further hearing, as requested by petitioner in its motion for further hearing to supplement and enlarge the record, to produce

further and additional evidence that it had no net income from its said mine in 1934.

20. The Board of Tax Appeals erred in that its decision is not supported by and is contrary to the evidence.

21. The Board of Tax Appeals erred in failing and refusing to enter a final order of redetermination that there is no deficiency in petitioner's income tax liability for 1935.

WHEREFORE, the petitioner petitions that the decision of the United States Board of Tax Appeals be reviewed by
113 the United States Circuit Court of Appeals for the Second Circuit, that a transcript of record be prepared in accordance with law and with the rules of said Court and transmitted to the Clerk of said Court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

PAUL E. SHORB
701 Union Trust Building
Washington, D. C.
Counsel for Petitioner.

COVINGTON, BURLING, RUBLEE,
114 ACHESON & SHORB
Of Counsel.

District of Columbia, ss:

PAUL E. SHORB, being first duly sworn, says that he is counsel of record in the above-named cause; that as such counsel he is authorized to verify the foregoing petition for review; that he has read the said petition and is familiar with the statements made therein, and that the statements made are true to the best of his knowledge, information and belief.

PAUL E. SHORB

Subscribed and sworn to before
me this 26th day of November, 1940.

MARJORY E. WOOD
Notary Public, D. C.

My Commission Expires July 15, 1944.
(Seal)

Notice of Filing Petition for Review. 116

(Filed Nov. 26, 1940)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

B. T. A. DOCKET No. 98500.

[SAME TITLE]

To:
J. P. Wenchel, 117
Chief Counsel, Bureau of Internal Revenue,
Washington, D. C.

You are hereby notified that the petitioner, Mother Lode Coalition Mines Company, did on the 26th day of November, 1940, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Second Circuit, of the decision of the Board of Tax Appeals heretofore rendered in the above-entitled cause. A copy of

the petition for review and assignments of error as filed is hereto attached and served upon you.

Dated this 26th day of November, 1940.

PAUL E. SHORB
701 Union Trust Building
Washington, D. C.
Counsel for Petitioner.

Personal service of the above and foregoing notice, together with a copy of the petition for
119 review and assignments of error mentioned therein, is hereby acknowledged this 26th day of November, 1940.

J. P. WENCHEL,
Counsel for Respondent.

Statement of Evidence.

(Lodged July 11, 1938)

(Filed July 12, 1941)

120 (Filed July 11, 1941)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

B. T. A. DOCKET No. 98500.

[SAME TITLE]

The following is a statement of evidence submitted to and proceedings had at the hearing before the Board of Tax Appeals in the above-entitled cause.

The above entitled proceeding came on for hearing on April 30, 1940, at New York, New York, before the Honorable J. Edgar Murdock, Member of the United States Board of Tax Appeals. The petitioner appeared by its attorney, Paul E. Shorb, and the respondent appeared by his attorney, Conway N. Kitchen, and Honorable J. P. Wenchel, Chief Counsel for the Bureau of Internal Revenue.

Offers in Evidence.

Counsel for petitioner offered and the Board received in evidence the following exhibits: 122

Petitioner's Exhibit 1. The original corporation income and excess profits tax return filed by petitioner for the year 1934. Said return was reviewed and audited by respondent and no changes or adjustments were made therein. A true and correct copy of said exhibit is attached hereto and made a part of this statement of evidence.

Petitioner's Exhibit 2. The amended corporation income and excess profits tax return of petitioner for the year 1934, which was filed with the Collector of Internal Revenue, Second District of New York on May 29, 1939, and by him forwarded to the respondent on June 2, 1939. Said amended return is identical with petitioner's original 123
return for 1934 except that it contains the following notice:

> "This taxpayer elects percentage depletion for this and all subsequent years thus reiterating its election of percentage depletion made in its 1933 return for 1933 and all subsequent years which included this year of 1934."

Petitioner's Exhibit 3. The corporation income and excess profits tax return of petitioner for the year 1935 together with an attached depletion schedule. A true and correct copy of said exhibit is attached hereto and made a part of this statement of evidence.

Petitioner's exhibit 4. The corporation income and excess profits tax return of petitioner for the year 1933 with depletion schedule attached thereto. A true and correct copy of said exhibit is attached hereto and made a part of this statement of evidence.

Petitioner's exhibit 5. The Revenue Agent's report dated December 31, 1936, on petitioner's 1935 return together with letter dated January 25, 1937, of the Internal Revenue Agent transmitting said report to petitioner. A true and correct copy of said exhibit, excluding page 2 thereof, which relates to instructions for the preparation
125 of protest to said report, and which is not material upon this appeal, is attached hereto and made a part of this statement of evidence.

Petitioner's exhibit 6. The Revenue Agent's report dated January 19, 1939, on petitioner's 1935 return. A true and correct copy of said exhibit excluding pages 2, 3, and 4 thereof, which relate to form of waiver, statement of instructions, and form of receipt evidencing receipt of the Revenue Agent's report, which pages are not material upon this appeal, is attached hereto and made a part of this statement of evidence.

Petitioner's exhibit 7. Petitioner's protest filed with the
126 Revenue Agent in Charge, Second New York Division, on January 27, 1939, to the Revenue Agent's report of January 19, 1939. A true and correct copy of said exhibit is attached hereto and made a part of this statement of evidence.

Petitioner's exhibit 8. A blank form of the respondent's corporation income and excess profits tax return (Form 1120) for the calendar year 1933 to which form was attached respondent's sheet of instructions for preparing returns, which contained the following instruction with reference to depletion:

"23 Depletion.—If a deduction is claimed on account of depletion, secure from the collector Form D (minerals), Form E (coal), Form F (miscellaneous nonmetals), Form O (oil and gas), or Form T (timber), fill in and file with return. If complete valuation data have been filed with Questionnaire in previous years, then file with this return information necessary to bring your depletion schedule up to date, setting forth in full statement of all transactions bearing on deductions or additions to value of physical assets with explanation of how depletion deduction for the taxable year has been determined. See Sections 23 (1) and 114 of the Revenue Act of 1932."

128

Petitioner's Exhibits 9 and 10. Blank forms of the respondent's corporation income and excess profits tax returns (Form 1120) for the calendar years 1934 and 1935, respectively, to which forms were attached respondent's sheet of instructions for preparing said returns. The instructions on said forms with reference to depletion are identical with the instructions contained in the 1933 form except that the latter instructions refer to Section 23(m) and Section 114 of the Revenue Act of 1934 rather than to Section 23(l) and Section 114 of the Revenue Act of 1932.

Counsel for petitioner then read into the record and there was received in evidence the following oral stipulation of facts which was agreed to by counsel for petitioner and respondent: 129

"Petitioner during the years 1933, 1934, and 1935 owned, and still owns, certain copper mining property located at or near Kennecott, Alaska. Petitioner acquired said mining property in 1919. During the years 1933, 1934, and 1935, petitioner was engaged in the business of mining and selling copper.

During the year 1934, petitioner's property was shut down and petitioner did not mine any of its property during that year. Petitioner did, however, sell in 1934 certain copper which it had on hand and which had been mined in prior years.

Petitioner had a profit from its mining operations in 1935 and reported a net income of $63,466.00 in its Federal income tax return for that year.

In all returns of petitioner for years subsequent to 1935, it claimed depletion on the percentage basis.

The petitioner was not entitled to any deduction for depletion on a cost basis, for its mining property at Kennecott, Alaska, for the years 1933, 1934, and 1935. If petitioner is entitled to percentage depletion for the year 1935 under the provisions of Section 114(b)(4) of the Revenue Act of 1934, the amount thereof is $25,276.88, as claimed by petitioner in its 1935 Federal income tax return; and, in such event there is no de-
131 ficiency due from or refund due this petitioner for the year 1935."

Thereafter Mr. James Dean, having been first duly sworn as a witness on behalf of the petitioner, testified as follows:

Direct Examination.

I live at Tenafly, New Jersey. My business is copper mining. I am the treasurer of the petitioner and have held that position since 1923. As treasurer I take care of petitioner's income tax returns, review them, see that they are
132 properly filed and I have charge of other financial matters. I aided in the preparation of petitioner's 1933 income tax return and reviewed it before filing.

In that return we gave very serious consideration to the matter of the deduction of depletion. We had run out of cost depletion and in order to get any depletion deduction at all we had to make an election in that year to take percentage depletion. We discussed the matter of percentage depletion and we decided to take percentage depletion for 1933 and thereafter. I wrote the rider attached to the 1933 return and I remember putting for that year and thereafter. By "thereafter" was meant all succeeding years. I thought we had made an election for them.

I am also familiar with the preparation and filing of petitioner's 1934 income tax return. There was no depletion deduction in the 1934 return. A percentage depletion deduction was not claimed in petitioner's 1934 return because we had considered the entire matter; we had exhausted our cost depletion, we had no income in 1934 so we could not make any deduction for depletion. In reaching that decision we considered the election we had made in our 1933 return and we thought we had made a binding election for succeeding years.

I read the instruction sheets on the 1933, 1934, and 1935 returns (Form 1120). We did not file for the years 1933, 134
1934, or 1935 any Form D referred to in the instructions in the case of metal mines as that form is a valuation form which we had filed in prior years and it was not necessary to file one for 1933, 1934, or 1935.

The petitioner ceased to operate its mine at Kennecott, Alaska, involved in this proceeding, in August, 1938.

Cross Examination.

I testified that I read the instructions contained on petitioner's returns for the years 1933, 1934, and 1935. I think I looked at Section 114 of the Revenue Act of 1934 after I 135
read the instructions attached to the 1934 return.

Redirect Examination.

After I looked at Section 114(b)(4) of the Revenue Act of 1934, we concluded that as we had made an election for 1933 which we considered to be a binding election for 1933 and thereafter, that we had not operated our mine in 1934, and that we had no income or right to deduct depletion in 1934, we felt that the 1933 election was still effective, and we concluded that no further action on petitioner's 1934 return was required or was necessary.

Recross Examination.

At the time I prepared the original 1934 return for the petitioner I was familiar with and considered Section 114(b)(4) of the Revenue Act of 1934.

Direct Examination.

Mr. James Dean, having heretofore been first duly sworn, was recalled to the stand and testified as follows with reference to subdivision (J)(1), item 13 of Schedule L of peti-
137 tioner's original income tax return for 1934 (Exhibit 1, hereof) which is labelled "depletion $25,144.51":

When petitioner was organized it placed a value on its property of $15,000,000.00, but later the Bureau of Internal Revenue reduced that value to $7,000,000.00. The petitioner never changed the value which it had originally placed on its books. It continued to deduct dep' .on on the basis of the original value on its books, although on its tax returns it deducted depletion on the basis which the Government had allowed. Said item is the amount which petitioner deducts on its books on the basis of the original value given it in 1919 in its accounts. In other words, the
138 aforementioned item on petitioner's return is shown in a schedule of non-deductible items and that is the deduction for depletion on the cost basis of $15,000,000.00 which, if petitioner were following its book cost and not the Commissioner's income tax cost, petitioner would be entitled to deduct. That entry was also made on petitioner's books in 1933 and every year petitioner followed its own basis for deducting depletion on its books. In other years petitioner showed a similar non-deductible amount in its returns which was in reconciliation of surplus between book income and tax income. Such nondeductible amounts shown in petitioner's returns also included such items as income tax which is not deductible. The $25,144.51 item listed on peti-

tioner's 1934 return was not transferred or claimed as a deduction in petitioner's income tax return for that year because petitioner was not allowed to deduct it under the Treasury Department rulings because such item was based on a value in excess of the value the Treasury Department gave petitioner for depletion and petitioner's cost depletion as computed on the Bureau's basis had been exhausted in 1925.

Hearing concluded.

Approval of Statement of Evidence by Counsel for Petitioner on Review and by Counsel for Respondent on Review. 140

The foregoing, together with petitioner's Exhibits 1, 3, 4, 5, 6, 7, is all of the evidence material on appeal adduced at the hearing before the Board of Tax Appeals, and the same is approved by the undersigned, Paul E. Shorb, as attorney for the petitioner on review, and by the Honorable J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, as attorney for the respondent, Commissioner of Internal Revenue.

PAUL E. SHORB,
Attorney for Petitioner. 141

J. P. WENCHEL,
Chief Counsel
Bureau of Internal Revenue
Attorney for Respondent
Commissioner of Internal Revenue

Approved and ordered filed this 12th day of July 1941.

(S) J. M. STERNHAGEN,
Member United States Board of Tax Appeals

FORM 1004 MUST BE FILED WITH THIS RETURN

Form 1004 Shall Accompany Page 1 of Return

CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN
For Calendar Year 1934

or Fiscal Year begun _____, 1934, and ended _____, 1935

(Print Formally Corporation's Name and Business Address)

MOTHER LODE COALITION MINES COMPANY

120 BROADWAY (Street)

NEW YORK, New York (Post office and State)

It is Essential, Except Where Otherwise Provided in the Instructions, That This Form be Completely Filled in Irrespective of Any Statements, Schedules, or Reports Submitted Therewith

Date of Incorporation APRIL 17, 1919

Under the Laws of what State or Country DELAWARE

B. 2652

Ref. 4-New York

Date _____ (Collector's Stamp)

Cash Check M.O. Over-Pmt. (Mark Payment)

$

The Corporation's Books are in Care of JAMES HOAR, TREASURER Located at 120 BROADWAY, NEW YORK, NEW YORK

Kind of Business (In detail) COPPER MINING (Also check Industrial Division on page 3) Is This a Consolidated Return of Affiliated Corporations? NO If so, of How Many Corporations? _____

If a Foreign Corporation, State Whether Resident or Nonresident _____; If Nonresident, State Amount of Income Included (Instructions on Form Given Income), $ _____

Is the Corporation a personal holding company within the meaning of Section 351 of the Revenue Act of 1934? NO (Answer "yes" or "no") (If so, an additional return on Form 1120 H must be filed)

ATTACH REMITTANCE HERE

GROSS INCOME

1. Gross Sales (where inventories are an income-determining factor), $ _____; Less Returns and Allowances, $ _____; Net Sales					$	61	007	57			
2. Less Cost of Goods Sold:											
(a) Inventory at beginning of year	$	54	045	04							17
(b) Material or merchandise bought for manufacture or sale											
(c) Miscellaneous costs (From Schedule A, Column 3): (1) Salaries and wages, $ _____; (2) Other costs, $ _____; Total		6	070	19							
(d) Total of Items (a), (b), and (c)	$	60	115	23							59
(e) Less inventory at end of year		16	918	02		44	197	21			
3. Gross Profit from Sales (Item 1 minus Item 2)					$	27	809	36			
4. Gross Receipts (where inventories are not an income-determining factor)	$										3
5. Less cost of operations (From Schedule A, Column 3): (a) Salaries and wages, $ _____; (b) Other costs, $ _____; Total											
6. Gross Profit where inventories are not an income-determining factor (Item 4 minus Item 5)											
7. Interest on Loans, Notes, Mortgages, Bonds, Bank Deposits, etc.							42	24			6
8. Rents					$	[illegible]	100	00			
9. Royalties											
10. Capital Gain or Loss (From Schedule B)											
11. Interest on Liberty Bonds, etc. (From Schedule D)											
12. Dividends on Stock of: (a) Domestic Corporations subject to taxation under Title I of Revenue Act of 1934											
(b) Domestic Corporations not subject to taxation under Title I of Revenue Act of 1934											
(c) Foreign Corporations											
13. Other Income (State nature of income) (Use separate schedule, if necessary)											
14. TOTAL INCOME (Items 3, and 6 to 13, inclusive)									$ 27	865	12

DEDUCTIONS

15. Compensation of Officers (From Schedule C)					$					
16. Rent on Business Property										
17. Repairs (From Schedule D): (a) Salaries and Wages, $ _____; (b) Other costs, $ _____; Total										
18. Interest										
19. Taxes (From Schedule E)						2	861	46		
20. Losses by Fire, Storm, etc. (From Schedule F)										
21. Bad Debts (From Schedule G)										
22. Dividends (from 12 to above)										
23. Depreciation (including from exhaustion, wear and tear, or obsolescence) (From Schedule H)										
24. Depletion of Mines, Oil and Gas Wells, Timber, etc. (Attach schedule, see Instructions H)										
25. Other Deductions Authorized by Law (Explain below, or on separate sheet): N.Y. General Expense						10	000	00		
Selling Commission						1	217	75		
(a) Salaries and wages (Not included in Items 2, 5, 15, 17): Advertising						1	004	00		
Railway Express on Refined Copper										
(b) Northern Express						41	900	00		
26. TOTAL DEDUCTIONS (Items 15 to 25)									66	783	20
27. NET INCOME (Item 14 minus Item 26)									$ 38	082	06

U.S. BOARD OF TAX APPEALS
Docket No. _____ Docket Entry
Petitioner's Exhibit No. _____
APR 30 1940
PETITIONER'S
Respondent's Exhibit No. _____

COMPUTATION OF TAX

6. Gross Profit where inventories are not an income-determining factor (Item 4 minus Item 5)			
7. Interest on Loans, Notes, Mortgages, Bonds, Bank Deposits, etc.	48	26	
8. Rents	192	[illegible]	
9. Royalties			
10. Capital Gain or Loss (From Schedule D)			
11. Interest on Liberty Bonds, etc. (From Schedule E)			
12. Dividends on Stock of:			
(a) Domestic Corporations subject to taxation under Title I of Revenue Act of 1934			
(b) Domestic Corporations not subject to taxation under Title I of Revenue Act of 1934			
(c) Foreign Corporations			
13. Other Income (State nature of income (Use separate schedule, if necessary)			
14. Total Income as Items 3, 4(c) 6 to 13, inclusive			27 865 12

DEDUCTIONS

15. Compensation of Officers (From Schedule C)			
16. Rent on Business Property			
17. Repairs (From Schedule D) (If Schedule and Wages, 5)		Total	
18. Interest			
19. Taxes (From Schedule E)	7 891	44	
20. Losses by Fire, Storm, etc. (From Schedule F)			
21. Bad Debts (From Schedule G)			
22. Dividends (Item 12 (a) above)			
23. Depreciation (omitting from subtraction, year and tax, or abandonment) (From Schedule H)			
24. Depletion of Mines, Oil and Gas Wells, Timber, etc. (Schedule attached, see Regulations 94)			
25. Other Deductions Authorized by Law (Explain below, or on separate sheet) N.Y. General Expense	15 669	20	
Selling Commission	1 217	75	
Bell Telephone Expense on Refinish Copper	1 864	00	
(a) Salaries and wages. (Not included in Items 5, 6, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25) Miscellaneous Expense	41 269	20	
(b)			66 703 59
26. Total Deductions as Items 15 to 25			
27. Net Income (Item 14 minus Item 26)			26 862 53

U. S. BOARD OF TAX APPEALS
Det. 3 DOCKET NO. [illegible]
(If Original Order)
APR 30 1940
PETITIONER'S EXHIBIT 1

COMPUTATION OF TAX

Income Tax		Excess-Profits Tax	
28. Net Income (Item 27, above)	None	29. Net Income for Excess-profits Tax Computation (Item 27, above)	None
29. Less Interest on Liberty Bonds, etc. (Item 11)		30. Less: Credit of 8% value of capital stock or allowance in lieu capital stock and credit for net capital losses (Sec. 710)	
30. Balance subject to Income Tax (Item 28 minus Item 29)	None	31. Amount Subject to Excess-profits Tax (Item 29 minus Item 30)	
31. Income Tax (Table of Rates (2) for [illegible] of Item 30, if this is a corporation or a [illegible])		32. Excess-profits Tax (2% of Item 31)	
32. Less Income Tax Paid at Source: (a) U.S. Corporations (Form [illegible])		Note—Separate computation of Excess-profits Tax must be made in this form for each member of an affiliated group of corporations making a consolidated Income Tax return.	
(b) Income Tax Paid to a Foreign Country or U.S. Possession (Sec. [illegible] Regulations)			
33. Balance of Income Tax (Item 31 minus Items 32 (a) and (b))			

SCHEDULE L—RECONCILIATION OF NET INCOME AND ANALYSIS OF CHANGES IN SURPLUS

1. Net income from Line 29, page 1 of this return		29	999	46	10. Charitable deductions:			
2. Nontaxable income:					(a) Donations, gifts, and contributions			
(a) Interest on obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia, or United States possessions					(b) Income and profits taxes paid to the United States, and such taxes paid to its possessions or foreign countries if claimed as a credit in whole or in part in Item 16, page 1 of the return		823	53
(b) Interest on obligations of the United States (except interest in excess of exemption as reported in Schedule J (1))					(c) Federal taxes paid on tax-free government bonds			
(c) Dividends deductible under Section 26 (p) of the Revenue Act of 1936					(d) Special improvement taxes leading to increase the value of the property assessed			
(d) Proceeds of life insurance policies paid upon the death of the insured					(e) Furniture and fixtures, additions, or betterments, treated as expenses on the books			
(e) Other items of nontaxable income (to be detailed):					(f) Replacements and renewals			
(1)					(g) Insurance premiums paid on the life of any officer or employee where the corporation is directly or indirectly a beneficiary			
(2)					(h) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest upon which is wholly exempt from taxation			
(3)					(i) Additions to reserve for bad debts which are not included in Item 10, page 1 of return			
3. Charges against reserve for bad debts, if Item 10, page 1 of return is not an addition to a reserve					(j) Additions to reserve for contingencies, etc. (to be detailed):			
4. Charges against reserve for contingencies, etc. (to be detailed):		3	681	69	(1) Depletion		39	144 91
(a)					(2)			
(b)					(3)			
(c)					(k) Other nondeductible deductions (to be detailed):			
5. Total of Lines 1 to 4, inclusive		35	216	67	(1)			
6. Total from Line 11		26	968	06	(2)			
7. Net profit or loss for year, as shown by books, before income taxes are made thereto (Line 7 minus Line 6) (If a deficit, enter in red)		61	184	71	(3)			
8. Surplus and undivided profits as shown by balance sheet at close of preceding taxable year	2	906	743	05	11. Total of Line 12		39	968 06
9. Other credits to surplus (to be detailed):					12. Dividends paid during the taxable year (state whether paid in cash, stock of the corporation, or other property):			
(a)					(a) Date paid ..... Character			
(b)					(b) Date paid ..... Character			
(c)					(c) Date paid ..... Character			
(d)					(d) Date paid ..... Character			
10. Total of Lines 7 to 9, inclusive	2	967	927	76	13. Other debits to surplus (to be detailed):			
11. Total from Line 17					(a)			
12. Surplus and undivided profits as shown by balance sheet at close of taxable year (Line 10 minus Line 11)	2	967	927	76	(b)			
					(c)			
					(d)			
					14. Total of Lines 13 and 14			

NET INCOME (OR DEFICIT) REPORTED IN RETURN FOR CALENDAR YEAR OR FISCAL YEAR BEGINNING

1. Net income $ 9,999.20 for 1944

NATURE OF BUSINESS

2. Check the block to indicate the principal division in which the corporation's main business predominates, i.e., manufacturing, mining, trading, banking, insurance, and related industries, including selling, distribution, the harvesting, leasing and processing of natural products.

☐ Mining and quarrying, including oil and gas wells, and related processes

MANUFACTURING

Food and kindred products

☐ Bakery and confectionery products

☐ Canned products—fish, fruit, vegetables, poultry

☐ Mill products—corn, flour, etc.

☐ Meat products—meats, lard, dressed poultry

☐ Sugar—beet, cane, maple syrup, etc.

☐ Other food products—butter substitutes, oil cake, cereal, spices, dairy products, ice, etc.

☐ Beverages, soft drinks, mineral water

☐ Brewing and distilling—alcohol, liquors, beer, malt liquors, wines

☐ Tobacco products

Textiles

☐ Yarns, goods—cloth goods, etc.; carpets, rugs

☐ Finished and knitted goods—cloth goods, etc.; wool products, hosiery

☐ Silk and rayon goods—cloth goods, thrown silk, silk and rayon hosiery

☐ Carpets, floor coverings, linoleum, linoleum

☐ Other textiles—cord, twine, tow, burlap, cordage, bagging, wadding, etc.

☐ Clothing—outer wear, factory made underwear, haberdashery, etc.

☐ Soft goods—corsets, hosiery, etc.

☐ Leather boots, shoes, slippers, etc.

☐ Other leather products—saddlery, harness, gloves, luggage, handbags

☐ Rubber shoes and boots

☐ Other rubber goods—boots, shoes, hose, soft rubber goods

☐ Glass, ceramics and brick products

☐ Cement and plaster mill products

MANUFACTURING—(Continued)

Metal products and processes

☐ Iron and steel—products of blast furnaces, rolling mills, foundries

☐ Locomotives and railroad equipment

☐ Motor vehicles, complete or parts

☐ Machinery—factory, not for producing food, leather, metal, paper, printing, chemicals, stone, clay, glass, textile and wood products

☐ Machinery—[illegible] and equipment

☐ Machinery—electrical and electronic

☐ Machinery—mine, building, construction, oil and mining machinery and pump sets

☐ Household equipment—metal furniture, refrigerators, iron and brass products, etc.

☐ Office equipment

☐ Metal building material and equipment

☐ Hardware, tools, etc.

☐ Precious metal, products and processes

☐ Other metals, products and processes

Miscellaneous manufacturing

☐ Radios, complete or parts

☐ Musical, professional, and scientific instruments, optical goods, metal beds

☐ Airplanes, airships, complete, parts

☐ Construction, reconstruction, heating, lighting, refrigeration, drain, sewerage and ventilating systems

☐ Transportation—rail, water, metal, motor, etc.—factory work included

☐ Public utilities—electric, light or power, gas, manufactured or natural, steam heat, waterworks, telephone, radio, factory or office, fuel supply, rail terminals, etc.—factory work included

☐ Storage and storage plants—storage, warehouses, cold storage houses, etc.

Trading

☐ Wholesale

☐ Retail

☐ Wholesale and retail

AFFILIATIONS WITH OTHER CORPORATIONS (See Instruction 8)

8. Is this a consolidated return? No. If so, prepare from the schedule of internal revenue for your display Form 851, Affiliations Schedule, which shall be filed in, except by, and filed as a part of this return.

9. Was the business of this corporation included in a consolidated return for the prior year? No

If so, give name of corporation which filed the consolidated return.

PREDECESSOR BUSINESS

10. Did the corporation under the same name for the preceding taxable year? Yes

Was the corporation in any way an successor, merger, combination, or succession of a business or business in existence during this or any prior year since December 31, 1917? No. If answer is "yes", give name and address of each predecessor business, and the date of the change in ownership.

If any such change was any asset value increased or decreased?

If the answer is "yes", closing balance sheet of old business and opening balance sheet of new business must be furnished.

BASIS OF REPORT

11. Is this return made on the basis of cash receipts and disbursements? No

If not, describe fully what other basis or method was used in computing net income.

Accruals and Reserves

VALUATION OF INVENTORIES

12. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. If other basis was used, describe fully, state why used and the date necessary was first recorded with check.

Cost or market whichever is lower

PREPARATION OF RETURN (See Instruction 13)

13. Did any person or persons other than the corporation in response of any question or matter affecting any item or schedule of this return, or assist or advise the corporation in the preparation of this return, or actually prepare this return for the corporation? No. If so, give the name and address of such person or persons and state the nature and extent of the assistance or advice received and the items and schedules in respect of which the assistance or advice was received. If this return was actually prepared by any person or persons other than the corporation, state the name of the information reported in the return and the manner in which it was furnished to or obtained by such person or persons.

5. Total of Lines 1 to 4, inclusive		00	426	87
6. Total from Line 14		20	968	06
7. Net profit or loss for year, as shown by books, before taxes are made thereto (Line 7 minus Line 6) (If loss, enclose in parentheses)		61	186	71
8. Surplus and undivided profits as shown by balance sheet at close of preceding taxable year	2	906	763	03
9. Other credits to surplus (to be detailed): (a) (b) (c) (d)				
10. Total of Lines 7 to 9, inclusive	2	967	927	74
11. Total from Line 17				
12. Surplus and undivided profits as shown by balance sheet at close of taxable year (Line 10 minus Line 11)	2	967	927	74

(c)				
(d)				
13. Total of Line 12		20	968	06
14. Dividends paid during the taxable year (state whether paid in cash, stock of the corporation, or other property): (a) Date paid ..... Character ..... (b) Date paid ..... Character ..... (c) Date paid ..... Character ..... (d) Date paid ..... Character				
15. Other debits to surplus (to be detailed): (a) (b) (c)				
17. Total of Lines 14 and 15				

NET INCOME (OR DEFICIT) REPORTED IN RETURN FOR CALENDAR [illegible] FISCAL YEAR [illegible]

1. Net income ..... $ 5,999.00 ..... for deficit ..... $ .....

NATURE OF BUSINESS

5. Check the block to indicate the principal division in which the corporation's main business [illegible]

[illegible] and related industries, including milling, factory, ice-harvesting, [illegible] activities.

☒ Mining and quarrying, including oil and all [illegible] and properties.

MANUFACTURING

Food and kindred products

☐ Bakery and confectionery products.

☐ Canned products—fish, fruit, vegetables, poultry, etc.

☐ Mill products—meal, flour, feed.

☐ Packinghouse products—meats, lard, sausage casing.

☐ Sugar—beet, cane, maple molasses, etc.

☐ Other food products—butter substitutes, oil [illegible], milk, cheese, dairy products, ice, etc.

☐ Beverages, soft drinks, mineral waters.

☐ Brewing and distilling—alcohol, liquors, beer, malt liquor, wines.

☐ Tobacco products.

Textiles

☐ Yarns, goods—dress goods, etc.; supplies, clothing.

☐ Woolen and worsted goods—dress goods, etc.; wool [illegible], blankets.

☐ Silk and rayon goods—dress goods, [illegible] etc.; [illegible], stockings.

☐ Carpets, rugs, coverings, linoleum, [illegible].

☐ Other textiles—wool, felt, fur, [illegible], artificial [illegible], [illegible] cloth, etc.

☐ Clothing, [illegible] goods, factory goods, underwear, haberdashery, etc.

☐ Knit goods—sweaters, hosiery, etc.

☐ Leather boots, shoes, slippers, etc.

☐ Other leather products—saddlery, harness, [illegible], luggage, [illegible].

☐ Rubber tires and tubes.

☐ Other rubber goods—boots, shoes, [illegible], [illegible] rubber.

☐ Iron, wrought and heavy products.

☐ Nonferrous and plating mill products.

☐ Other metal products—[illegible], wagons, furniture, hardware, etc.

Paper, pulp and [illegible]

☐ Printing, publishing, and allied industries.

☐ Petroleum and other mineral oil refining and products.

☐ Chemicals, paints, [illegible], and [illegible] products.

☐ [illegible], drugs, oils, soaps, etc.

☐ Paints, pigments, varnishes, etc.

☐ Fertilizers.

☐ Stone, clay, glass, and related products.

MANUFACTURING—(Continued)

Metal products and processes

☐ Iron and steel—products of blast furnaces, rolling mills, foundries.

☐ Locomotives and railroad equipment.

☐ Motor vehicles, complete or parts.

☐ Machinery—factory, used in producing food, leather, metal, paper, printing, [illegible], shoes, clay, glass, lime or cement products.

☐ Machinery—[illegible] and equipment.

☐ Machinery—electrical and equipment.

☐ Machinery—other, building, construction, [illegible] and mining machinery and [illegible].

☐ Household equipment—metal furniture, refrigerators, [illegible], etc.

☐ Office equipment.

☐ Metal building material and equipment.

☐ Hardware, tools, etc.

☐ Precious metal, products and processes.

☐ Other metals, products and processes.

Miscellaneous manufacturing

☐ Toilet, complete or parts.

☐ Musical, professional, and scientific instruments, optical goods, watches.

☐ Airplanes, airships, gliders, parts.

☐ Construction—[illegible], bridges, buildings, railroads, ships, [illegible] and [illegible] systems.

☐ Transportation—rail, water, air, [illegible], etc.; loading [illegible].

☐ Public utilities—electric, light or power, gas, [illegible] of water, [illegible], telephone, telegraph, radio, [illegible], heat supply, toll bridges, etc.; leasing such [illegible].

☐ Storage—cold storage, grain elevators, [illegible], safe deposit vaults, etc.

Trades

☐ Wholesale.

☐ Retail.

☐ Wholesale and retail.

☐ Construction.

☐ All other trade—[illegible] service, garages [illegible], etc.

☐ Service—professional, business, [illegible], and all other.

Finance

☐ Banks—national, state, private, savings, [illegible] stock [illegible].

☐ Stock and bond brokers, investment bankers, [illegible].

☐ Real estate, utility holding, and [illegible].

☐ Insurance companies [illegible].

☐ Other finance—loan companies, building and loan associations, [illegible], [illegible] companies.

AFFILIATIONS WITH OTHER CORPORATIONS (See Instruction 22)

2. Is this a consolidated return? No If so, answer from the schedule of [illegible] corporations for your district Form 851, Affiliations Schedule, which shall be filed by, attached to, and filed as a part of this return.

4. Was the business of this corporation included in a consolidated return for the prior year? No

If so, give name of corporation which filed the consolidated return.

PERSONNEL DEPARTMENT

5. Did the corporation file a return under the same name for the preceding taxable year? Yes

Was the corporation in any way an outgrowth, result, continuation, or reorganization of a business or [illegible] in existence during this or any prior year since December 31, 1917? No If answer is "yes", give name and address of such predecessor business, and the date of the change in ownership.

Did any change occur any asset values increased or decreased?

If the answer is "yes", closing balance sheets of old business and opening balance sheets of new business must be furnished.

BASIS OF RETURN

6. Is this return made on the basis of cash receipts and disbursements? No

If not, describe fully what other basis or method was used in computing net income.

Accruals and Reserves

VALUATION OF INVENTORIES

7. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. If other basis was used, describe fully, state why used and the date [illegible] necessary was last considered with [illegible].

Cost or market whichever is lower

PREPARATION OF RETURN (See Instruction 23)

8. Did any person or persons advise the corporation in regard to any question or matter affecting any item or schedule of this return, or assist or advise the corporation in the preparation of this return, or actually prepare this return for the corporation? No If so, give the name and address of such person or persons and state the nature and extent of the assistance or advice received and the items and schedules in regard of which the assistance or advice was received. If this return was actually prepared by any person or persons other than the corporation, state the source of the information reported in this return and the manner in which it was furnished to or obtained by such person or persons.

INFORMATION RETURN

9. Did the corporation make a return of labor unions on Form 1096 and 1099 (see Instruction 27) for the calendar year [illegible]? No

LIST OF ATTACHED SCHEDULES

10. Enter below a list of all schedules accompanying this return, giving [illegible] number. The name and address of the corporation [illegible] stockholder [illegible] subsidiary [illegible]

SCHEDULE B—BALANCE SHEETS (See Instructions 10)

Items	Beginning of Taxable Year: Amount	Beginning of Taxable Year: Total	End of Taxable Year: Amount	End of Taxable Year: Total
ASSETS				
1. Cash		$ 486 246 91		$ 804 092 00
2. Notes receivable				
3. Accounts receivable	$ 61 287 71		$ 11 188 00	
(a) Less reserve for bad debts		61 287 71		11 188 00
4. Inventories:				
(a) Raw materials	$		$	
(b) Work in process				
(c) Finished goods. Copper on hand	20 548 06		10 938 22	
(d) Supplies	277 20		277 20	
		20 825 26		11 215 42
5. Investments (securities):				
(a) Obligations of a State, Territory, or any political subdivision thereof, or District of Columbia, or United States possessions	$		$	
(b) Obligations of instrumentalities of the United States				
(c) Obligations of the United States		None		None
6. Other investments:				
(a) Stocks of domestic corporations	$		$	
(b) Bonds of domestic corporations				
(c) Stocks and bonds of foreign corporations				
(d) All other investments or loans	27 726 22		24 905 24	
7. Deferred charges:				
(a) Prepaid insurance	$ 1 [illegible] 70		$	
(b) Prepaid taxes				
(c) All other		1 [illegible] 70		None
8. Capital assets:				
(a) Land	$		$	
(b) Buildings. & Equipment	644 905 34		644 905 34	
(c) Machinery and equipment				
(d) Furniture and fixtures				
(e) Delivery equipment				
Also Property	18 197 274 [illegible]		18 197 274 [illegible]	
Depreciation Reserve	[illegible]		[illegible]	
(f) Less reserves for depreciation (except on land)	$ 17 715 [illegible]		$ 17 715 [illegible]	
	17 [illegible]	[illegible]	17 [illegible]	[illegible]
9. Patents				
10. Good will				
11. Other assets (describe fully):				
	$		$	

6. Other investments:																		
(a) Stocks of domestic corporations	$									$								
(b) Bonds of domestic corporations																		
(c) Stocks and bonds of foreign corporations																		
(d) All other investments or loans			87	770	00		87	770	00			84	905	00			84	905	00
7. Deferred charges:																		
(a) Prepaid insurance	$		2	000	79					$								
(b) Prepaid taxes																		
(c) All other							2	000	79								None	
8. Capital assets:																		
(a) Land	$									$								
(b) Buildings & Equipment			644	908	34							644	908	34				
(c) Machinery and equipment																		
(d) Furniture and fixtures																		
(e) Delivery equipment																		
Mine Property		16	197	274	81						16	197	274	81				
Organization Expense			870	300	00							870	300	00				
	$	17	712	482	00					$	17	712	482	00				
(f) Less reserves for depreciation (except on land)		17	104	888	00		888	883	88		17	104	077	00			888	883	41
9. Patents																		
10. Good will																		
11. Other assets (describe fully):																		
	$									$								
12. Total Assets						$	1	199	489	22						$	1	171	288	80
LIABILITIES																		
13. Notes payable (less than one year)						$		4	327	94						$		28	828	78
14. Accounts payable																		
15. Bonds and notes (not secured by mortgage)																		
16. Mortgages (including bonds and notes so secured)																		
17. Accrued expenses:																		
(a) Interest	$									$								
(b) Taxes			7	275	00							7	275	00				
(c) All other			2	000	00		10	300	50				494	00			7	769	00
18. Other liabilities (describe fully):																		
	$									$								
19. Capital stock:																		
(a) Preferred stock (less stock in treasury)	$									$								
(b) Common stock (less stock in treasury)		4	091	368	81		4	091	368	81		4	091	368	81		4	091	368	81
20. Surplus	$																			
21. Undivided profits							2	906	743	03							2	967	927	74
22. Total Liabilities						$	1	199	489	22						$	1	171	288	80

Remarks

Form 4 of Revenue

SCHEDULE A (See Instructions 9 and 10)

4. Cost of other current expenses and cost of current operating supplies		5. Cost of additional current expenses and cost of current operating supplies	
Items	Amount (Enter on Line 4)	Items	Amount (Enter on Line 5)
Salaries and wages	$	Salaries and wages	$
Other costs		Other costs	

SCHEDULE B—CAPITAL GAINS AND LOSSES (See Instructions 10)

1. Description of Property	2. Date Acquired	3. Date Sold	4. Amount Received	5. Cost	6. March 1, 1913, Value of Property Before Vest Date	7. Cost or Improvements Added After Acquisition on March 1, 1913	8. Depreciation Allowed (or Allowable) Since Acquisition on March 1, 1913 (Furnish details)	9. Gain or Loss
	Mo. Day Year	Mo. Day Year						
			$	$	$	$	$	$

Net Gain or Loss (enter as Item 10) (Capital losses are allowable only to the ..... of $2,000 plus capital gains) $

State (1) how property was acquired ..... ; (2) whether at time of sale or exchange purchaser owned more than 50% in value of your outstanding stock .....

Every sale or exchange of stock should be reported in detail, including name and address of corporation, class of stock, number of shares, capital changes affecting basis (stock dividends, other nontaxable dividends, stock rights, etc.).

Cost of property must be entered in column 5 if a loss is claimed in column 9.

SCHEDULE C—COMPENSATION OF OFFICERS (See Instruction 12)

1. Name and Address of Officer	2. Official Title	3. Time Devoted to Business	Shares of Stock Owned 4. Common	5. Preferred	6. Amount of Compensation (Enter on Line 14)
					$

Form Schedule C-1 also must be filed with this return if compensation in excess of $15,000 was paid to any officer or employee.

SCHEDULE D—COST OF REPAIRS (See Instruction 17)

1. Items	2. Amount (Enter on Line 17)
Salaries and wages	$
Other costs	

SCHEDULE E—TAXES PAID (See Instruction 19)

1. Items	2. Amount (Enter on Line 19)
State of Delaware	$ 6,275 00
Capital Stock Tax	1,000 00
Territory of Alaska	15 00
Federal Check Tax	1 66
	$ 7,291 66

SCHEDULE F—EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC. (See Instruction 20)

1. Date of Property	2. Date Acquired	3. Cost	4. Depreciation Improvements	5. Depreciation Allowable Since Acquisition	6. Insurance and Salvage Value	7. Deductible Loss (Enter on Line 20)
		$	$	$	$	$

State how property was acquired .....

SCHEDULE G—BAD DEBTS (See Instruction 21)

1. Year	2. Amount of Accounts	3. Bad Debts
1930	$	$
1931		
1932		
1933		
1934		

SCHEDULE H—INCOME FROM DIVIDENDS (See Instruction 12)

Include below all dividends received during the year, stating the amount and the name and address of the corporation which declared the dividend.

SCHEDULE I—EXPLANATION OF DEDUCTION FOR DEPRECIATION (See Instruction 22)

1. Items	2. Amount (Enter on line 10)	1. Items	2. Amount (Enter on line 10)
Salaries and wages	$	State of Delaware Capital Stock Tax	$ 6,275 00
Other costs		Territory of Alaska Capital Stock Tax	1,000 00
		Federal Check Tax	10 00
			1 00
			$ 7,291 00

SCHEDULE F—EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC. (See Instruction 20)

1. Kind of Property	2. Date Acquired	3. Cost	4. Depreciation Allowed	5. Depreciation Allowable Since Acquisition	6. Depreciated Value	7. Deductible Loss (Enter on line 10)
		$	$	$	$	$

State how property was acquired

SCHEDULE G—BAD DEBTS (See Instruction 21)

1. Year	2. Amount of Accounts	3. Bad Debts
1930	$	$
1931		
1932		
1933		
1934		

SCHEDULE H—INCOME FROM DIVIDENDS (See Instruction 12)

Number below all dividends received during the year, stating the amount and the name and address of the corporation which declared the dividend.

SCHEDULE I—EXPLANATION OF DEDUCTION FOR DEPRECIATION (See Instruction 22)

1. Kind of Property (Enter also on line 1, Schedule E)	2. Date Acquired	3. Cost or March 1, 1913 Value of Acquired Property (Enter also on line 1, Schedule E)	4. Amount Prior Depreciation Allowed at Beg. of Year	5. Depreciation Allowed for Acquisition in Prior Years	6. Remaining Cost or Other Basis to be Recovered	7. Life Used in Accumulating Depreciation	8. Estimated Remaining Life from Beginning of Year	9. Depreciation Allowable This Year
		$	$	$	$			$

SCHEDULE J—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 11)

1. Obligations or Securities	2. Amount Owned	3. Interest Received or Accrued	4. Principal Amount Exempt from Taxation	5. Amount Owned at Beginning of Reporting	6. Interest on Amount at Beginning of Reporting (Enter on line 1g)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or Porto Rico issuance.	$	$	AS	$	$
(b) Obligations issued under Federal Farm Loan Act, as amended, and as required, Section 1, [illegible]			AS		
(c) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness.			AS		
(d) Liberty 4½ and 4¼ Bonds and Treasury Bonds.			AS		
(e) Obligations of instrumentalities of the United States (other than obligations to be included in line 1f above)			Name	$	$

AFFIDAVIT (See Instruction 30)

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including its accompanying schedules and statements, if any) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1934 and the Regulations issued thereunder.

Sworn to and subscribed before me this 12 day of March, 1935

[illegible]

(Signature of other administering officer)

Sol. Jos. S.D.T. Co. No. 2 Sub. [illegible]
Commission expires Oct. 20, 1936

(President or other principal officer)

(Treasurer, Assistant Treasurer, or chief accounting officer)

AFFIDAVIT (See Instruction 31)

I/we swear (or affirm) that I/we prepared this return for the person named herein and that the return (including its accompanying schedules and statements, if any) is a true, correct, and complete statement of all the information respecting the income tax and/or excess-profits tax liability of the person for whom this return has been prepared of which I/we have any knowledge.

Sworn to and subscribed before me this ..... day of ....., 193

(Signature of person preparing the return)

(Signature of person preparing the return)

(Signature of other administering officer) (Title)

(Address of firm or employer, if any) (Address)

61

52

For Calendar Year 1936

April 17, 1919

Delaware

Copper Mining

GROSS INCOME

1. Gross Sales (where inventories are an income-determining factor), $; Less Returns and Allowances, $; Net Sales					$	311	100	98				
2. Less Cost of Goods Sold:												
(a) Inventory at beginning of year	$	10	916	22								
(b) Material or merchandise bought for manufacture or sale												
(c) Miscellaneous costs (from Schedule A, Column D): (1) Salaries and wages, $; (2) Other costs, $; Total		329	184	54								
(d) Total of Items (a), (b), and (c)	$	339	100	76								
(e) Less inventory at end of year		178	069	98		161	030	78				
3. Gross Profit from Sales (Item 1 minus Item 2)					$	150	070	20				
4. Gross Receipts (where inventories are not an income-determining factor)	$											
5. Less cost of operations (from Schedule A, Column D): (a) Salaries and wages, $; (b) Other costs, $; Total												
6. Gross Profit where inventories are not an income-determining factor (Item 4 minus Item 5)												
7. Interest on Loans, Notes, Mortgages, Bonds, Bank Deposits, etc.												
8. Rent							166	00				
10. Capital Gain or Loss (from Schedule D)												
11. Interest on Liberty Bonds, etc. (from Schedule L, Items 1 to 10 (1) and (2))												
12. Dividends on Stock of: (a) Domestic Corporations subject to taxation under Title I of Revenue Act of 1936												
(b) Domestic Corporations not subject to taxation under Title I of Revenue Act of 1936												
(c) Foreign Corporations												
13. Other Income (from return of income) (Use separate schedule, if necessary) Salvage of Old Material							18	00				
14. Total Income (by Items 3, and 6 to 13, inclusive)									$	300	848	20

U.S. BOARD OF TAX APPEALS
APR 30 1940

GROSS INCOME

1. Gross Sales (where inventories are not an income-determining factor), $; Less Returns and Allowances, $; Net Sales, $ 211,109.00

2. Less Cost of Goods Sold:
   (a) Inventory at beginning of year $ 38,924.00
   (b) Material or merchandise bought for manufacture or sale
   (c) Miscellaneous costs (from Schedule A, Volume 2): (1) Salaries and wages, $; (2) Other costs, $; Total 148,180.36
   (d) Total of Items (a), (b), and (c) $ 187,104.36
   (e) Less inventory at end of year 179,000.00 — 167,628.72

3. Gross Profit from Sales (Item 1 minus Item 2) $ 100,480.28

4. Gross Receipts (where inventories are not an income-determining factor) $

5. Less cost of operations (from Schedule A, Volume 2): (1) Salaries and wages, $; (2) Other costs, $; Total

6. Gross Income (where inventories are not an income-determining factor) (Item 4 minus Item 5)

7. Interest on Loans, Notes, Mortgages, Bonds, Bank Deposits, etc.

8. Rents

9. Royalties

10. Capital Gain or Loss (from Schedule D)

11. Interest on Liberty Bonds, etc. (from Schedule A, Items 2 (a) (2) and (3))

12. Dividends on Stock of:
   (a) Domestic Corporations subject to taxation under Title I of Revenue Act of 1936
   (b) Domestic Corporations not subject to taxation under Title I of Revenue Act of 1936
   (c) Foreign Corporations

13. Other Income (from sales of assets (file separate schedule, if necessary)) Salvage of Old Material 12.00

14. Total Income (Items 3, and 6 to 13, inclusive) $ 100,492.28

U.S. BOARD OF TAX APPEALS
No. 3 DOCKET
APR 30 1940
EXHIBIT

DEDUCTIONS

15. Compensation of Officers (from Schedule C)

16. Rent on Business Property

17. Repairs (from Schedule D) (a) in States and Wages, $; (b) Other Costs, $; Total 20,505.84

18. Interest

19. Taxes (from Schedule E) 9,324.42

20. Losses by Fire, Storm, etc. (from Schedule F)

21. Bad Debts (from Schedule G) (Schedule showing amount determined to be worthless during taxable year (Section 23 (k)) attached)

22. Dividends (from H (a) above)

23. Depreciation (including from exhaustion, wear and tear, or obsolescence) (from Schedule I)

24. Depletion of Mines, Oil and Gas Wells, Timber, etc. (Schedule attached, as required by Schedule Ia, I) 48,576.00

25. Other Deductions Authorized by Law (Explain below, or on separate sheet): Shut-down Expense 9,000.10
   (a) Miscellaneous expenses (Schedule attached, as required by Schedule J): New York Income Tax Expense 12,
   (b) Charitable contributions (Schedule attached, as required by Schedule K): Selling Commission 9,974.10
   (c) Delivery Expense on Refined Copper 7,775.00

26. Total Deductions (Items 15 to 25) $ 88,750.00

27. Net Income (Item 14 minus Item 26) $ 11,742.28

COMPUTATION OF TAX

Income Tax

28. Net Income (Item 27, above) $ 11,742.28
29. Less Interest on Liberty Bonds, etc. (Item 11) None
30. Balance subject to Income Tax (Item 28 minus Item 29) $ 11,742.28
31. Income Tax (Schedule Tax Table or 12% of Item 30, if Title Ia) $ 2,790.50
32. Less Income Tax Paid at Source: (1) Paid at Source (Schedule Tax Table) $; (2) Paid at Source (Schedule Ia) $
33. Balance of Income Tax (Item 31 minus Item 32) $ 2,790.50

34. Net Income (Item 27, above) $ 11,742.28
35. Less Net Income for Normal Tax Purposes (Item 30, above) $ 11,742.28
36. Less tax credit (Sec. 101) (Schedule Ia, Item 12) 130,197.72
37. Amount Subject to Surtax $
38. Surtax (Schedule Tax Table or 12% of Item 37) None
39. Total Tax (Item 33 plus Item 38) $ 2,790.50

Note: Corporations filing consolidated returns should show the total tax for the consolidated group on Form 1120 in lieu of the tax shown on this form.

40. Internal Revenue Tax Paid (Schedule Ia, Item 13) $ 2,790.50

Note: Corporations filing consolidated returns should show the total tax for the consolidated group on Form 1120 in lieu of the tax shown on this form.

SCHEDULE L—[illegible] OF THE [illegible] AND [illegible] OF [illegible] OF [illegible]

1. Net income subject to taxation (from M, page 1 of return)		53	665	30
2. Nontaxable income:				
(a) Income on:				
(1) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions				
(2) Obligations issued under Federal Farm Loan Act, or under such Act as amended				
(3) Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917				
(4) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness				
(5) Liberty 4% and 4¼% Bonds, United States Savings Bonds, and Treasury Bonds owned in the principal amount of $5,000 and under				
(6) Liberty 4% and 4¼% Bonds, United States Savings Bonds, and Treasury Bonds owned in the principal amount of over $5,000				
(7) Obligations of instrumentalities of the United States (other than those to be reported in Line 2 (a) (2) above)				
(b) Dividends deductible under Section 26 (p) of the Revenue Act of 1926				
(c) Proceeds of life insurance policies paid upon the death of the insured				
(d) Other items of nontaxable income (to be detailed):				
(1)				
(2)				
3. Charges against reserve for bad debts, if Item 10, page 1 of return, is not an addition to a reserve				
4. Charges against reserve for contingencies, etc. (to be detailed):				
(a) Reserve Against Copper Gifts.		44	483	97
(b)				
5. Total of Lines 1 to 4, inclusive		107	949	57
6. Total from Line 11		64	587	36
7. Net profit or loss for year, as shown by books, before any adjustments are made thereto (Line 5 minus Line 6 if loss, indicate)		43	362	21
8. Surplus and undivided profits as shown by balance sheet at close of preceding taxable year	2	967	927	74
9. Other credits to surplus (to be detailed):				
(a)				
(b)				
10. Total of Lines 7 to 9, inclusive	2	924	865	53
11. Total from Line 17				
12. Surplus and undivided profits as shown by balance sheet at close of taxable year (Line 10 minus Line 11)	2	924	865	53

13. Nontaxable deductions:				
(a) Franchise, gross or net sale tax				
(b) Income and profits taxes paid to the United States, and such taxes paid to the government of foreign countries if claimed as a credit in whole or in part in Item 15, page 1 of the return		0	786	50
(c) United States gift or inheritance taxes				
(d) Capital improvement items leading to increase the value of the property owned				
(e) Furniture and fixtures, additions, or betterments treated as expense on the books				
(f) Replacements and renewals				
(g) Insurance premiums paid on the life of any officer or employee where the corporation is directly or indirectly a beneficiary				
(h) Interest on indebtedness incurred or continued to purchase or carry obligations (other than obligations of the United States issued after September 24, 1917, and subjectly exempt from taxation)				
(i) Additions to reserve for bad debts which are not included in Item 10, page 1 of return				
(j) Additions to reserve for contingencies, etc. (to be detailed):				
(1)				
(2)				
(3)				
(k) Other nontaxable deductions (to be detailed):				
(a) Depletion		20	260	79
(b)				
(c)				
14. Total of Line 13		64	587	36
15. Dividends paid during the taxable year (state whether paid in cash, stock of the corporation, or other property):				
(a) Date paid _____ Character _____				
(b) Date paid _____ Character _____				
(c) Date paid _____ Character _____				
(d) Date paid _____ Character _____				
16. Other debits to surplus (to be detailed):				
(a)				
(b)				
(c)				
17. Total of Lines 15 and 16				

NATURE OF BUSINESS

1. Check the block to indicate the industrial division in which the corporation's main business (including business life):

MANUFACTURING

Food and kindred products:

- ☐ [illegible]
- ☐ Canned products—fish, fruit, vegetables, etc.
- ☐ Mill products—bran, flour, feed.
- ☐ Packing-house products—meats, lard, dressed poultry.
- ☐ Sugar—beet, cane, maple; molasses, etc.
- ☐ Other food products—butter substitutes, or nuts, coffee, spices, dairy products, fish, etc.
- ☐ Beverages, soft drinks, mineral water.
- ☐ Brewing and distilling—alcohol, liquors, beer, malt extract, wines.
- ☐ Tobacco products.

MANUFACTURING—(Continued)

Mixed products and commodities—(multinational, manufacturing, mining, or producing food, tobacco, textile, leather, paper, printing, chemicals, stone, clay, glass, metals, or wood products):

- ☐ Machinery—agricultural and equipment.
- ☐ Machinery—electrical and equipment.
- ☐ Machinery—office, building, construction, gas and mining machinery and equipment.
- ☐ Household equipment—household furniture, refrigerators, cooking utensils, etc.
- ☐ Office equipment.
- ☐ Metal building material and equipment.
- ☐ Hardware, tools, etc.
- ☐ Precious metal, products and processes.

AFFILIATIONS WITH OTHER CORPORATIONS (See Instructions)

2. Is this a consolidated return? No. If so, process from the collector of Internal Revenue for your District Form 851, Affiliations Schedule, which shall be filled in, sworn to, and filed as part of this return.

3. Was the income of this corporation included in a consolidated return for the prior year? No.

If so, give name of corporation which filed the consolidated return. _____

PREDECESSOR BUSINESS

4. Did the corporation file a return under the same name for the preceding taxable year? Yes. Was the corporation in any way an outgrowth, merger, combination, or reorganization of a business or business in existence during this or any prior year since December 31, 1917? No. If answer is "yes", give name and address of each predecessor business, and the date of the change in entity.

_____

5. Total of Lines 1 to 4, inclusive		107	942	87
6. Total from Line 11		64	507	26
7. Net profit or loss for year, as shown by books, before any adjustments made thereto (Line 5 minus Line 6) (If loss, indicate)		43	362	61
8. Surplus and undivided profits as shown by balance sheet at close of preceding taxable year	2	967	927	74
9. Other credits to surplus (to be detailed): (a)				
(b)				
10. Total of Lines 7 to 9, inclusive	2	924	860	53
11. Total from Line 17				
12. Surplus and undivided profits as shown by balance sheet at close of taxable year (Line 10 minus Line 11)	2	924	860	53

13. Total of Line 6		64	507	26
14. Dividends paid during the taxable year (state whether paid in cash, stock of the corporation, or other property): (a) Date paid ____ Character ____				
(b) Date paid ____ Character ____				
(c) Date paid ____ Character ____				
(d) Date paid ____ Character ____				
15. Other debits to surplus (to be detailed): (a)				
(b)				
(c)				
16. Total of Lines 13 and 15				

NATURE OF BUSINESS

1. Check the block to indicate the industrial division in which the corporation's main business producing business falls:

MANUFACTURING

Food and kindred products:

- ☐ Meat products—fish, fowl, vegetables, etc.
- ☐ Grain products—flour, feed, meal
- ☐ Bakery products—cookies, bread, dough-nuts
- ☐ Sugar—beet, cane, maple, molasses, etc.
- ☐ Other food products—butter, confectionery, ice cream, coffee, spices, dairy products, fish, etc.
- ☐ Beverages, soft drinks, mineral water
- ☐ Brewing and distilling—alcohol, liquors, beer, malt extract, wines
- ☐ Tobacco products

Textiles:

- ☐ Other goods—dress goods, etc.; supplies, dyeing
- ☐ Knitted and woven goods—dress goods, etc.; wool pulling, weaving
- ☐ Silk and rayon goods—dress goods, thrown silk, silk spinning, weaving
- ☐ Carpets, floor coverings, linoleum, tile-board
- ☐ Other textiles—cord, felt, tar, linen, artificial leather, imitated leather, etc.
- ☐ Clothing—women's wear, factory made, men's wear, hosiery, etc.
- ☐ Knit goods—sweaters, hosiery, etc.
- ☐ Leather tan'g, shoes, slippers, etc.
- ☐ Other leather products—saddlery, harness, trunks, handbags, luggage
- ☐ Rubber tires and tubes
- ☐ Other rubber goods—boots, shoes, hose, soft-rubber rubber
- ☐ Stone, unbroken and ivory products
- ☐ Sawmill and planing mill products
- ☐ Furniture (not metal)
- ☐ Other wood products—coffins, wagons, baskets, etc.
- ☐ Paper, pulp and products
- ☐ Printing, publishing, and allied industries
- ☐ Petroleum and other mineral oil refining and products
- ☐ Chemicals proper, acids, compounds, and fertilizers, etc.
- ☐ Allied chemical and drugs—dyes, oils, soaps, etc.
- ☐ Paints, pigments, varnishes, etc.
- ☐ Fertilizers
- ☐ Glass, clay, stone, and related products

Metal products and processes:

- ☐ Iron and steel—products of blast furnaces, rolling mills, foundries
- ☐ Locomotives and railroad equipment
- ☐ Motor vehicles, complete or parts

MANUFACTURING—(Continued)

Metal products and processes—(Continued):

- ☐ Machinery—agricultural and equipment
- ☐ Machinery—electrical and equipment
- ☐ Machinery—other, building, construction, gas and mining machinery and equipment
- ☐ Household equipment, metal furniture, refrigerators, cooking stoves, etc.
- ☐ Office equipment
- ☐ Metal building material and equipment
- ☐ Hardware, tools, etc.
- ☐ Precious metal, products and processes
- ☐ Other metals, products and processes

Miscellaneous manufacturing:

- ☐ Textiles, complete or parts
- ☐ Musical, professional, and scientific instruments, optical goods, metal beds
- ☐ Airplanes, airships, engines, parts

NONMANUFACTURING

Trade:

- ☐ Wholesale
- ☐ Retail
- ☐ Wholesale and retail
- ☐ Commission
- ☐ Other trade—repair service, garages, etc.

Finance:

- ☐ Banks—national, State, private, savings, joint stock land banks
- ☐ Stock and bond brokers, investment brokers or bankers
- ☐ Real estate, realty building, and equity agents
- ☐ Insurance companies (not agents)
- ☐ Professional, trade, stock exchanges, stock building associations
- ☐ Other finance—loan companies, building and loan associations, trusts, mortgage or joint stock, investment trusts
- ☐ Agriculture and related industries, including farms, forestry, stock-raising, horticulture, fish production
- ☐ Mining and quarrying, including gas and oil wells, factory work, production
- ☐ Construction—contractors, builders, buildings, railroads, roads, sewerage and building systems
- ☐ Transportation—railroads, motor, water, etc.; including truck, trucking
- ☐ Communication—telegraph, telephone, radio, etc.
- ☐ Public utilities—electric light or power, gas, purchase of current, pipe lines, telegraph, telephone, radio, transportation, local transit, bridges, etc.; including work, utilities
- ☐ Service—professional, business, amusement, personal, and all other

APPLICATION WITH OTHER CORPORATIONS (See Instructions)

3. Is this a consolidated return? No. If so, present here the affiliation of internal revenue for each domestic Form 851, Affiliations Schedule, which shall be filed in, attached, and filed as part of this return.

2. Was the income of this corporation included in a consolidated return for the prior year? No.

If so, give name of corporation which filed the consolidated return.

PREDECESSOR BUSINESS

4. Did the corporation file a return under the same name for the preceding taxable year? Yes. Was the corporation in any way an assignee, result, combination, or reorganization of a business or business in existence during this or any prior year since December 31, 1937? No. If answer is "yes", give name and address of such predecessor business, and the date of the change in entity.

Upon such change were any asset values increased or decreased?

If the answer is "yes", closing balance sheet of old business and opening balance sheet of new business must be furnished.

BASIS OF REPORT

5. Is this return made on the basis of cash receipts and disbursements? No.

If not, describe fully what other basis or method was used in computing net income.

Accruals and Reserves

VALUATION OF INVENTORIES

6. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. If other basis was used, describe fully, state [illegible] and the date inventory was last reconciled with stock.

Cost or market whichever is lower

PREPARATION OF REPORT (See Instructions 8)

7. Did any person or persons advise the corporation in regard to any question or matter affecting any item or schedule of this return, or assist or advise the corporation in the preparation of this return, or actually prepare this return for the corporation? No. If so, give the name and address of such person or persons and state the nature and extent of the assistance or advice received and the items and schedules in respect of which the assistance or advice was rendered. If this return was actually prepared by any person or persons other than the corporation, state the reason why the information required in this return and the manner in which it was furnished have checked by such person or persons.

INFORMATION REPORT

8. Did the corporation make a return of information on Forms 1099 and 1096 [illegible] for the calendar year 1937? [illegible]

LIST OF ATTACHED SCHEDULES

9. Enter below a list of all schedules accompanying this return, giving for each a brief title and the schedule number. The name and address of the corporation should be placed on each separate schedule accompanying the return.

Schedule J - Depletion

[illegible] 2 - [illegible]

AFFIDAVIT

[illegible], Treasurer of the Mother Lode Coalition Mines Company, deposes as follows:

1. The taxpayer, Mother Lode Coalition Mines Company, is the owner of copper properties located in the McCarthy Mining Recording District at Kennecott, Alaska.

2. The taxpayer is the owner in fee of the copper properties.

3. The mining properties were acquired by the taxpayer on May 1, 1919.

4. Under the provisions of Section 114 (b)[illegible] of the Revenue Act of 1932 the taxpayer elected to deduct depletion on the percentage basis for the year 1933 and thereafter.

Depletion on percentage basis for the year 1935 is calculated as follows:

Gross sales of product of Mine		$311,100.98
Less:		
Freight to Smelter	$ 47,139.59	
Smelting & Refining	52,134.79	
Marine Insurance	742.79	
Delivery Expense on Copper	7,775.82	
Selling Expense on Copper	2,374.19	
Administration Expense	18,40[illegible].23	
Mine Taxes	15.00	
	$142,5[illegible].41	142,5[illegible].41
Gross Income from Property		$16[illegible],512.57
Percentage Depletion being 15% of above Gross Income from Property		$25,27[illegible].88
Net Income of Taxpayer (before depletion)		[illegible]
Percentage Depletion allowable		25,276.88

New York,
New York.

Treasurer.

Sworn to and subscribed before me this 13 day of March, 1936.

[illegible]

Items	Beginning of Taxable Year								End of Taxable Year							
	Amount				Total				Amount				Total			
ASSETS																
1. Cash:																
(a) Demand deposits, including checks	$	884	882	02					$	323	489	19				
(b) Time deposits, including certificates of deposit																
(c) All other cash					$	884	882	02					$	323	489	19
2. Notes receivable																
3. Accounts receivable	$	11	123	86					$	361	480	91				
(a) Less reserve for bad debts						11	123	86						361	480	91
4. Inventories:																
(a) Raw materials: Grain	$								$	10	358	64				
(b) Work in process																
(c) Finished goods: Copper on Hand		10	916	22						149	573	22				
(d) Supplies			977	90							605	60				
						11	894	12						166	567	46
5. Investments (marketable):																
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	$								$							
(b) Obligations issued under Federal Farm Loan Act, or other such Act as amended																
(c) Liberty Bonds and other obligations of United States issued on or before September 1, 1917																
(d) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness																
(e) Liberty 3½ and 4½% Bonds, United States Savings Bonds, and Treasury Bonds																
(f) Obligations of instrumentalities of the United States other than obligations to be reported in item 10 below							None								None	
6. Other investments:																
(a) Stocks of domestic corporations	$								$							
(b) Bonds of domestic corporations																
(c) Stocks and bonds of foreign corporations																
(d) All other investments or loans		24	906	39		24	906	39							None	
7. Deferred charges:																
(a) Prepaid insurance	$								$							
(b) Prepaid taxes																
(c) All other							None			93	462	37		93	462	37
8. Capital assets:																
(a) Buildings, A Equipment	$	644	903	14					$	644	903	14				
(b) Machinery and equipment																
(c) Furniture and fixtures																
(d) Delivery equipment																
(e) Other depreciable assets																
(f) Total of Items (a) to (e)	$	644	903	14					$	644	903	14				
(g) Less reserves for depreciation		644	903	14			None			644	903	14			None	
(h) Depletable assets	$17	073	583	86					$17	073	583	86				
(i) Less reserves for depletion	16	515	174	48		558	409	41	16	596	312	11		477	271	75
(j) Land																
9. Patents																
10. Good will																
11. Other assets (describe fully):	$								$							

6. Other investments:																
(a) Stocks of domestic corporations	$								$							
(b) Bonds of domestic corporations																
(c) Stocks and bonds of foreign corporations																
(d) All other investments or loans		34	906	39		24	906	39							None	
7. Deferred charges:																
(a) Prepaid insurance	$								$							
(b) Prepaid taxes																
(c) All other							None			93	462	37		93	462	37
8. Capital assets:																
(a) Buildings & Equipment	$	644	903	14					$	644	903	14				
(b) Machinery and equipment																
(c) Furniture and fixtures																
(d) Delivery equipment																
(e) Other depreciable assets																
(f) Total of Items (a) to (e)	$	644	903	14					$	644	903	14				
(g) Less reserves for depreciation		644	903	14			None			644	903	14			None	
(h) Depletable assets	$17	073	583	86					$17	073	583	86				
(i) Less reserves for depletion	16	815	174	45		558	409	41	16	596	312	11		477	271	72
(j) Land																
9. Patents																
10. Good will																
11. Other assets (describe fully):	$								$							
12. Total Assets					$ 1	171	225	80					$ 1	422	266	68
LIABILITIES																
13. Notes payable (less than 1 year)					$								$			
14. Accounts payable						39	815	73						39	704	03
15. Bonds and notes (not secured by mortgage)																
16. Mortgages (including bonds and notes so secured)																
17. Accrued expenses:																
(a) Interest	$															
(b) Taxes			7	275	00					18	067	69				
(c) All other				494	00		7	769	00		201	291	70		219	359	39
18. Other liabilities (describe fully):	$								$							
19. Capital stock:																
(a) Preferred stock (less stock in treasury)	$								$							
(b) Common stock (less stock in treasury)	4	091	568	81	4	091	568	81	4	091	568	81	4	091	568	81
20. Surplus	$								$							
21. Undivided profits	2	967	927	74	2	967	927	74	2	984	865	53		24	865	53
22. Total Liabilities					$ 1	171	225	80					$ 1	422	266	68

Remarks:

Page 4 of Business

SCHEDULE A (See Instructions 3 and 5).

Items	Amount
Materials & Supplies	$ 37,[illegible]
Salaries and wages	[illegible]
Other costs: General Expense	5,[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]

Items	Amount
Salaries and wages	$
Other costs	

SCHEDULE B—CAPITAL GAINS AND LOSSES (FROM SALES OR EXCHANGES ONLY) (See Instructions 10)

1. Description of Property	2. Date Acquired	3. Date Sold	4. Gross Sales Price (Contract price)	5. Cost	6. Market L. 1913, Value of Assets Owned Prior Years Basis	7. Cost or Improvements Added Since Acquisition on March 1, 1913	8. Depreciation Allowed and Allowable Since Acquisition on March 1, 1913 (Furnish details)	9. Gain or Loss
	Mo. Day Year	Mo. Day Year	$	$	$	$	$	$

Gain or Loss (enter net amount on Item 10) (capital losses are allowable only to the extent of $2,000 plus capital gains) ..... $

State (1) how property was acquired ..... ; (2) whether at time of sale or exchange purchaser owned more than 50% in value of your outstanding stock .....

Every sale or exchange of stock should be reported in detail, including name and address of corporation, class of stock, number of shares, capital changes affecting basis (stock dividends, other nontaxable dividends, stock rights, etc.).

Cost of property must be entered in column 5 if a loss is claimed in column 9.

SCHEDULE C—COMPENSATION OF OFFICERS (See Instruction 12)

1. Name and Address of Officer	2. Common Title	3. Time Devoted to Business	Salaries or Drawing Officer		5. Amount of Compensation Allowed on Item 14
			4. Common	5. Preferred	
					$

Note: Schedule C-1 IN DUPLICATE also must be filed with this return if compensation in excess of $15,000 was paid to any officer or employee.

SCHEDULE D—COST OF REPAIRS (See Instruction 17)

1. Items	2. Amount (Enter on Item 20)
Salaries and wages	$
Other costs	

SCHEDULE E—TAXES PAID (See Instruction 18)

1. Items	2. Amount (Enter on Item 22)
State of Delaware Tax	$ [illegible]
Franchise of Right	[illegible]
Capital Stock	1,30[illegible]
Miscellaneous	[illegible]
	2,30[illegible]

SCHEDULE F—EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC. (See Instruction 20)

1. Kind of Property	2. Date Acquired	3. Cost	4. Depreciation Sustained	5. Depreciation Allowable Since Acquisition	6. Insurance and Other Recoveries	7. Deductions (Enter on Item 23)
		$	$	$	$	$

State how property was acquired .....

SCHEDULE G—BAD DEBTS (See Instruction 21)

1. Year	2. Net Income	3. Losses on Accounts	4. Bad Debts
1931	$	$	$
1932			
1933			
1934			
1935			

SCHEDULE H—INCOME FROM DIVIDENDS (See Instruction 22)

Enter here all dividends received during the year, stating the amount and the name and address of the corporation which declared the dividend.

SCHEDULE I—EXPLANATION OF DEDUCTION FOR DEPRECIATION (See Instruction 23)

1. Kind of Property (Enter on Item 24 the number of this schedule)	2. Date Acquired	3. Cost or Market L. 1913 Value of Assets Owned Prior Years (Enter Basis)	4. Accum. Depr. Sustained to Beg. of Year	5. Depreciation Allowed for Accumulated in Prior Years	6. Depreciation Cost or Other Basis for Depreciation	7. Less Unexp. Salvage Deduction	8. Depreciation Base Beg. of Year	9. Depreciation Allowable This Year
		$	$	$	$	$	$	

SCHEDULE C—COMPENSATION OF OFFICERS (See Instruction 15)

1. Name and Address of Officer	2. Citizenship Title	3. Time Devoted to Business	Stock of Stock Owned 4. Common	5. Preferred	6. Amount of Compensation (Enter on Line 14)
					$

Note: Schedule C-1 IN DUPLICATE also must be filed with this return if compensation in excess of $15,000 was paid to any officer or employee.

SCHEDULE D—COST OF REPAIRS (See Instruction 17)

1. Items	2. Amount (Enter on Line 16)
Salaries and wages	$
Other costs	

SCHEDULE E—TAXES PAID (See Instruction 18)

1. Items	2. Amount (Enter on Line 19)
State of Delaware Tax	$ [illegible]
Secretary of State	[illegible]
Capital Stock	1,30[illegible]
Miscellaneous	[illegible]
	9,30[illegible] 46

SCHEDULE F—EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC. (See Instruction 20)

1. Kind of Property	2. Date Acquired	3. Cost	4. Depreciation Sustained	5. Depreciation Allowed Since Acquired	6. Depreciation Allowable Since Acquired	7. Depreciation Sustained (Enter on Line 21)
		$	$	$	$	$

Note: Date property was acquired _____

SCHEDULE G—BAD DEBTS (See Instruction 21)

1. Year	2. Net Income	3. Bonds or Accounts	4. Bad Debts
1931	$	$	$
1932			
1933			
1934			
1935			

SCHEDULE H—INCOME FROM INVESTMENTS (See Instruction 22)

Enter here all dividends received during the year, stating the amount and the name and address of the corporation which declared the dividend.

SCHEDULE I—EXPLANATION OF DEDUCTION FOR DEPRECIATION (See Instruction 23)

1. Kind of Property (If Acquired Prior to 1932 Enter Cost Only)	2. Date Acquired	3. Cost or Market 1, 1932 Plus of Acquired Since Market Date	4. Annual Depreciation Allowable for Year of Use or Time	5. Depreciation Allowable in Prior Years	6. Depreciation Cost or Other Basis to be Recovered	7. Less Cost of Fully Depreciated Assets Retired or Sold	8. Depreciation Allowable Since Acquired or Time	9. Depreciation Allowable This Year
		$	$	$	$			$

AFFIDAVIT (See Instruction 40)

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including the accompanying schedules and statements, if any) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1936 and the Regulations issued thereunder.

Sworn to and subscribed before me this 16th day of March, 1937.

CORPORATE SEAL

(Signature of officer administering oath)

(Signature of president or other principal officer)

(Signature, treasurer, or chief accounting officer)

AFFIDAVIT (See Instruction 41)

I/we swear (or affirm) that I/we prepared this return for the person named herein and that the return (including its accompanying schedules and statements, if any) is a true, correct, and complete statement of all the information regarding the income tax and/or excess profits tax liability of the person for whom this return has been prepared of which I/we have any knowledge.

Sworn to and subscribed before me this _____ day of _____, 193_

_____ (Signature of person preparing the return)

_____ (Signature of person preparing the return)

CORPORATE SEAL

_____ (Signature of officer administering oath) _____ (Title) _____ (Name of firm or employer, if any)

57

CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN
For Calendar Year 1933

File This Return with the Collector of Internal Revenue for Your District on or Before March 15, 1934

PRINT PLAINLY CORPORATION NAME AND INTERNAL ADDRESS

Butte Lake Coalition Mines Company
(Name)
120 Broadway
(Street and number)
New York, N.Y.
(Post office and State)

Is Successful Except Where Otherwise Provided in the Instructions, That This Form Is Completely Filled in Irrespective of Any Statements, Schedules, or Exhibits Attached Hereto

Date of Incorporation April 17, 1930

Under the Laws of What State or Country Delaware

Page 1 of Returns

No. 1017

DEPOSIT REFUND RESERVE
MAR 16 1934
COLLECTOR INT. REV. 2nd DIST.

Amount 20.00

The Corporate Books are in Care of James Dean, Treasurer Address 120 Broadway, New York, N. Y.

Kind of Business Copper Mining Is This a Consolidated Return? No If so, of How Many Corporations?

If a Foreign Corporation, State Whether Doing Business or Not Doing Business; If Nonresident, State Amount of Income Included Hereunder in Gross Income, $

GROSS INCOME

1. Gross Sales (where inventories are not an income-determining factor), $; Less Returns and Allowances, $; Net Sales, $					210	000	00	
2. Less Cost of Goods Sold:								
(a) Inventory at beginning of year, $		197	198	00				
(b) Material or merchandise bought for manufacture or sale								
(c) Miscellaneous costs (from Schedule A, Column 3): (1) Salaries and wages, $; (2) Other costs, $; Total		10	000	94				
(d) Total of items (a), (b), and (c)		208	000	94				
(e) Less inventory at end of year		90	945	00	197	116	16	
3. Gross Profit from Sales (Item 1 minus Item 2)					12	773	18	
4. Gross Receipts (where inventories are not an income-determining factor) $								
5. Less cost of operations (from Schedule A, Column 3): (a) Salaries and wages, $; (b) Other costs, $; Total								
6. Gross Profit where inventories are not an income-determining factor (Item 4 minus Item 5)						900	29	
7. Interest on Loans, Notes, Mortgages, Bonds, Bank Deposits, etc.						180	00	
8. Rents								
9. Royalties								
10. (a) Profit from Sale of Stocks and Bonds held 2 years or less (from Schedule B, Total (a))								
(b) Profit or Loss from Sale of all other Assets (from Schedule B, Total (b))								
11. Dividends on Stock of:								
(a) Domestic Corporations subject to taxation under Title I of Revenue Act of 1932								
(b) Domestic Corporations not subject to taxation under Title I of Revenue Act of 1932								
(c) Foreign Corporations								
12. Other Income (Explanation of Income Not reported elsewhere, if necessary)								
13. Total Income (Amount on Items 3, and 6 to 12, inclusive)								

U. S. BOARD OF TAX APPEALS
DIV. 3 DOCKET
APR 30 1940
PETITIONER'S EXHIBIT 4

DEDUCTIONS

14. Compensation of Officers (from Schedule C)								
15. Rent on Business Property								
16. Repairs (from Schedule D): (a) Salaries and Wages, $; (b) Other Costs, $; Total								
17. Interest								
18. Taxes (from Schedule E)					0	000	00	
19. Losses by Fire, Storm, etc. (from Schedule F)						000	00	
20. Bad Debts (from Schedule G)								
21. Dividends (from Schedule H)								
22. Depreciation (including from exhaustion, wear and tear, or obsolescence) (from Schedule I)								
23. Depletion of Mines, Oil and Gas Wells, Timber, etc. (from schedule, or statement) Schedule J					0	900	84	

RECEIVED

GROSS INCOME

1. Gross Sales (where inventories are not an income-determining factor), $ _____ ; Less Returns and Allowances, $ _____ ; Net Sales, $ 218 002 29

2. Less Cost of Goods Sold:
   (a) Inventory at beginning of year, $ 197 188 85
   (b) Material or merchandise bought for manufacture or sale
   (c) Miscellaneous costs (from Schedule A, Column D)
   (1) Salaries and wages, $ 38 580 94 ; (2) Other costs, $ _____ ; Total
   (d) Total of Items (a), (b), and (c) 197 118 19
   (e) Less inventory at end of year 88 945 84
   Net 108 172 35

3. Gross Profit from Sales (Item 1 minus Item 2)

4. Gross Receipts (where inventories are not an income-determining factor)

5. Less cost of operations (from Schedule A, Column D):
   (a) Salaries and wages, $ _____ ; (b) Other costs, $ _____ ; Total

6. Gross Profit where inventories are not an income-determining factor (Item 4 minus Item 5)

7. Interest on Loans, Notes, Mortgages, Bonds, Bank Deposits, etc. 990 29

8. Rents 120 00

9. Royalties

10. (a) Profit from Sale of Stocks and Bonds held 5 years or less (from Schedule B, Total (a))
    (b) Profit or Loss from Sale of all other Assets (from Schedule B, Total (b))

11. Dividends on Stock of:
    (a) Domestic Corporations subject to taxation under Title I of Revenue Act of 1936
    (b) Domestic Corporations not subject to taxation under Title I of Revenue Act of 1936
    (c) Foreign Corporations

12. Other Income (State nature of income) (Use separate schedule, if necessary)

13. Total Income as Items 3, and 6 to 12, inclusive

U. S. BOARD OF TAX APPEALS
DOCKET
APR 30 1940
PETITIONER'S
EXHIBIT

RECEIVED
MAR 31 1941

DEDUCTIONS

14. Compensation of Officers (from Schedule C)

15. Rent on Business Property

16. Repairs (from Schedule D): (a) Salaries and Wages, $ _____ ; (b) Other Costs, $ _____ ; Total

17. Interest 8 801 99

18. Taxes (from Schedule E) 2 [illegible] 10

19. Losses by Fire, Storm, etc. (from Schedule F)

20. Bad Debts (from Schedule G)

21. Dividends (from Schedule H)

22. Depreciation (resulting from exhaustion, wear and tear, or obsolescence) (from Schedule I) Schedule J 8 989 84

23. Depletion of Timber, Oil and Gas Wells, Timber, etc. (attach schedule, see instructions H)

24. Other Deductions Authorized by Law (Explain below, or on separate sheet)
    (a) Salaries and wages (Not included in Items 14, 16, or 18 above) New York General Expense Building Construction 36 579 76 8 [illegible] 96
    (b) Delivery Expense on Refined Sugar 17 [illegible] 10

25. Total Deductions as Items 14 to 24 50 905 11

26. Net Income (Item 13 minus Item 25) 8 [illegible]

COMPUTATION OF TAX

Income Tax				Excess-Profits Tax			
27. Net Income (Item 26)	8 [illegible]			28. Net Income (Item 26)	8 [illegible]		
29. Less Income Tax Paid at Source (Attach Form 1099)				29. Less credit of $1,000,000 (only if credit [illegible])	120 000	00	
30. Income Tax Paid at Source (Attach Form 1099)				30. Excess-Profits Tax Paid at Source (Attach Form 1099)			Dollars
31. Balance of Income Tax (Item 27 minus Items 29 and 30)				31. Balance of Excess-Profits Tax (Item 28 minus Item 29)			Dollars

An amended return must be marked "Amended" across the top of the return. Refunds and credits will be assessed only if payable at par.

87

56

1. Net income from Item 18, page 1 of the return		9	989	82
2. Nontaxable income:				
(a) Interest on obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia				
(b) Interest on securities issued under the Federal Farm Loan Act, or under such Act as amended				
(c) Interest on obligations of the United States or its possessions				
(d) Dividends distributable under Section 26(b) of the Revenue Act of 1932				
(e) Proceeds of life insurance policies paid upon the death of the insured				
(f) Other items of nontaxable income (to be detailed):				
(1)				
(2)				
(3)				
3. Charges against reserve for bad debts, if Item 10, page 1 of return, is not an addition to a reserve				
4. Charges against reserve for contingencies, etc. (to be detailed):				
(a) Write against copper				
(b) certificates		1	964	24
(c)				
5. Total of Lines 1 to 4, inclusive		7	953	57
6. Total from Line 14		72	179	55
7. Net profit for year, as shown by books, before any adjustments are made thereto (Line 5 minus Line 6)		64	225	58
8. Surplus and undivided profits as shown by balance sheet at close of preceding taxable year	2	842	517	05
9. Other credits to surplus (to be detailed):				
(a)				
(b)				
(c)				
10. Total of Lines 7 to 9, inclusive	2	906	743	63
11. Total from Line 17				
12. Surplus and undivided profits as shown by balance sheet at close of taxable year (Line 10 minus Line 11)	2	906	743	63

13. Nontaxable deductions:				
(a) Donations, gratuities, and contributions				
(b) Income and profits taxes paid to the United States, and such taxes paid to the possessions or foreign countries if claimed as a credit in Item 20, page 1 of the return				
(c) Federal taxes paid on tax-free covenant bonds				
(d) Special improvement taxes tending to increase the value of the property assessed				
(e) Furniture and fixtures, additions, or betterments treated as expenses on the books				
(f) Replacements and renewals				
(g) Insurance premiums paid on the life of any officer or employee where the corporation is directly or indirectly a beneficiary				
(h) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest upon which is wholly exempt from taxation				
(i) Additions to reserve for bad debts which are not included in Item 10, page 1 of return				
(j) Additions to reserve for contingencies, etc. (to be detailed):				
(1) Depletion		72	179	55
(2)				
(3)				
(4)				
(k) Other nonbusiness or dedu[illegible] items (to be detailed):				
(1)				
(2)				
(3)				
14. Total of Lines 13		72	179	55
15. Dividends paid during the taxable year (state whether paid in cash, stock of the corporation, or other property):				
(a) Date paid ..... Character				
(b) Date paid ..... Character				
(c) Date paid ..... Character				
(d) Date paid ..... Character				
16. Other debits to surplus (to be detailed):				
(a)				
(b)				
(c)				
17. Total of Lines 14 and 16				

NET INCOME OR DEFICIT REPORTED IN RETURN FOR 1932 BEFORE DEDUCTING NET LOSS FOR PRIOR YEAR.

1. Enter amount of net income or deficit for 1932 before deducting net loss for 1931 ..... $ 186,393.18

2. Enter amount deducted in return for 1932 as net loss for 1931 ..... $ .....

KIND OF BUSINESS

3. State the main business engaged in, also whether acting as principal or as agent or commission; state if inactive or in liquidation:

Copper mining as principal

AFFILIATIONS WITH OTHER CORPORATIONS

SEE INSTRUCTION 40

4. Is this a consolidated return? No If so, procure from the Collector of Internal Revenue for your district Form 851, Affiliations Schedule, which shall be filled in, sworn to, and filed as a part of this return. See Section 141 of the Revenue Act of 1932 and Instruction 41.

5. Was the income of this corporation included in a consolidated return for the prior year? No

If so, give name of corporation which filed the consolidated return. .....

9. Other credits to surplus (to be detailed):				
(a)				
(b)				
(c)				
10. Total of Lines 7 to 9, inclusive	2	906	743	23
11. Total from Line 17				
12. Surplus and undivided profits as shown by balance sheet at close of taxable year (Line 10 minus Line 11)	2	906	743	23

(a) Date paid ..... Character				
(b) Date paid ..... Character				
(c) Date paid ..... Character				
16. Other debits to surplus (to be detailed):				
(a)				
(b)				
(c)				
17. Total of Lines 14 and 16				

NET INCOME OR DEFICIT REPORTED IN RETURN FOR 1932 BEFORE DEDUCTING NET LOSS FOR PRIOR YEAR

1. Enter amount of net income or deficit for 1932 before deducting net loss for 1931 ..... $ 188,803.18

2. Enter amount deducted in return for 1932 on net loss for 1931 ..... $ .....

KIND OF BUSINESS

3. State the main business engaged in, also whether acting as principal or as agent on commission; state if inactive or in liquidation:

Copper mining as principal

Check the proper block below to indicate the general industrial division in which the corporation's main income-producing business falls:

- [ ] Agriculture and related industries, including fishing, forestry, ice harvesting, etc.; also leasing of such property.
- [x] Mining and quarrying, including gas and oil wells; also leasing of such property.
- Manufacturing—
  - [ ] Food products and beverages.
  - [ ] Tobacco.
  - [ ] Textiles and textile products.
  - [ ] Leather and leather products.
  - [ ] Rubber and related products.
  - [ ] Lumber and wood products, including fiber furniture.
  - [ ] Paper, pulp and products.
  - [ ] Printing, publishing, and allied businesses.
  - [ ] Chemicals and allied products, including petroleum products.
  - [ ] Stone, clay, and glass products.
  - [ ] Metal and metal products, including precious metals and products.
  - [ ] Other manufacturing.
- [ ] Construction—excavations, buildings, bridges, railroads, ships, etc.; also equipping and installing operating systems, devices, or machinery without their manufacture.
- [ ] Transportation—rail, water, aerial, motor, etc.; also leasing of such facilities.
- [ ] Public utilities—electric light or power, gas (artificial or natural), pipe lines, telephone, telegraph or radio, waterworks, heating, toll bridges, etc.; also leasing of such utilities.
- [ ] Storage—cold storage, grain elevators, warehouses, safe deposit vaults, etc.; also leasing of such property.
- [ ] Trading—wholesale, retail, or combination.
- [x] Service—professional, business, amusement, and domestic, including hotels, restaurants, laundries, etc.
- [ ] Finance—banks and other financial organizations, insurance, real estate; also brokers and agents.

AFFILIATIONS WITH OTHER CORPORATIONS

SEE INSTRUCTION 40

4. Is this a consolidated return? No If so, produce from the Collector of Internal Revenue for your district Form 851, Affiliations Schedule, which shall be filed in, sworn to, and filed as a part of this return. See Section 141 of the Revenue Act of 1932 and Instruction 41.

5. Was the income of this corporation included in a consolidated return for the prior year? No

If so, give name of corporation which filed the consolidated return. .....

PREDECESSOR BUSINESS

6. Did the corporation file a return under the same name for the preceding taxable year? Yes Was the corporation in any way an outgrowth, result, continuation, or reorganization of a business or businesses in existence during this or any prior year since December 31, 1917? No If answer is "yes," give name and address of such predecessor business, and the date of the change in entity. .....

Upon such change were any asset values increased or decreased? .....
If the answer is "yes," closing balance sheets of old business and opening balance sheets of new business must be furnished.

BASIS OF RETURN

7. Is this return made on the basis of cash receipts and disbursements? .....
If not, describe fully what other basis or method was used in computing net income. accrual and reserve

VALUATION OF INVENTORIES

8. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. If other basis was used, describe fully; state why used and the date inventory was last reconciled with stock.

Cost or market -whichever is lower

LIST OF ATTACHED SCHEDULES

9. Enter below a list of all schedules accompanying this return, giving for each a brief title and the schedule number. The name and address of the corporation should be placed on each separate schedule accompanying the return.

Schedule 2 - Depletion

Notice to Corporations.

Deposited in Federal Reserve Bank May 15, 1934
Collector Int. Rev. 2nd Dist. N. Y.

This form should be executed and filed as a part of Corporation Income Tax Form 1120 for the calendar year 1933. If the corporation merely received *advice* from some person or persons employed to assist in the preparation of the return, the name and address of the advisor, together with a statement showing the extent to which such advice was received, is sufficient. If the return was *actually prepared* by any such person or persons, this form must be signed and sworn to by such person or persons. 143

Did the corporation employ anyone especially to prepare or advise in the preparation of its income tax return for the calendar year 1933? (Answer "yes" or "no") No
If so, give name and address and state to what extent such assistance or advice was received: 144

MOTHER LODE COALITION MINES COMPANY

JAMES DEAN,
Treasurer.

I, acting as ..... for the hereto sub-
We, (Attorney or advisor)
scribed taxpayer, affirm that I prepared the return, that
we
the information set out in the return and accompanying schedules, if any, correctly and truly represents the infor-

mation furnished or discovered by me during the course of
us
preparation of the return, and that such information is
true to the best of my information and belief.
our

.....
(Attorney or advisor)

.....
(Address)

146 Sworn to and subscribed before me this ..... day
of ....., 1934.

....
(Signature of officer administering oath) (Title)
Notarial Seal

Affidavit.

SCHEDULE J—DEPLETION

JAMES DEAN, Treasurer of the Mother Lode Coalition Mines Company, deposes as follows:

147 1. The taxpayer, Mother Lode Coalition Mines Company, is the owner of copper properties located in the McCarthy Mining Recording District at Kennecott, Alaska.

2. The taxpayer is the owner in fee of the copper properties.

3. The mining properties were acquired by the taxpayer on May 1, 1919.

4. Under the provisions of Section 114 (b) (4) of the Revenue Act of 1932 the taxpayer elects to deduct depletion on the percentage basis for the year 1933 and thereafter.

Depletion on percentage basis for the year 1933 is calculated as follows:—

Gross sales of products of the Mine		$212,892.30
Less:—		
Freight to Smelter	$ 62,267.02	
Smelting & Refining	57,466.23	
Marine Insurance	543.02	
Delivery Expense on Copper	17,329.19	
Selling Expense on Copper	3,785.76	
Administration Expense	14,573.74	
Mine Taxes	15.00	
	$155,979.96	
		155,979.96
Gross Income from Property		$ 56,912.34
Percentage Depletion, being 15% of above Gross Income from Property		$ 8,536.85
Net Income of the Taxpayer		$ 11,978.67
Percentage Depletion allowable, being 50% of above Net Income		$ 5,989.34

149

JAMES DEAN,
Treasurer.

140

New York:
New York:

Sworn to and subscribed before me this 8th day of March, 1934.

E. W. SCHWARZ

Items	Beginning of Taxable Year: Amount	Beginning of Taxable Year: Total	End of Taxable Year: Amount	End of Taxable Year: Total
ASSETS				
1. Cash		$ 228 089 80		$ 456 344 91
2. Notes receivable				
3. Accounts receivable	$ 145 887 72		$ 61 237 71	
Less reserve for bad debts		145 887 72		61 237 71
4. Inventories:				
Raw materials Ores	$ 1 038 80		$	
Work in process				
Finished goods Copper on Hand	196 099 45		58 543 06	
Supplies	977 90		977 90	
		198 116 15		59 520 94
5. Investments (nontaxable):				
Obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia	$		$	
Securities issued under the Federal Farm Loan Act, or under such Act as amended, and obligations of United States possessions ⅋				
Obligations of the United States		None		None
6. Other investments:				
Stocks of domestic corporations	$		$	
Bonds of domestic corporations				
Stocks and bonds of foreign corporations				
All other investments or loans	38 553 70	38 553 70	37 794 99	37 794 99
7. Deferred charges:				
Prepaid insurance	$ 1 048 66		$ 1 006 75	
Prepaid taxes				
All other	6 627 33	7 675 99		1 006 75
8. Capital assets:				
Land	$		$	
Buildings & equipment	844 903 14		844 903 14	
Machinery and equipment				
Furniture and fixtures				
Delivery equipment				
Mine property	16 197 274 21		16 197 274 21	
Organization expense	876 309 65		876 309 65	
	$ 17 718 487 00		$ 17 718 487 00	
Less reserves for depreciation (except on land)	17 056 764 19	661 722 81	17 134 933 08	583 553 92
9. Patents				
10. Good will				
11. Other assets (describe fully):				
	$		$	
12. Total Assets		$ 1 279 985 57		$ 1 199 459 22

Obligations of the United States																
6. Other investments:																
Stocks of domestic corporations	$								$							
Bonds of domestic corporations																
Stocks and bonds of foreign corporations																
All other investments or loans		38	553	70		38	553	70		37	794	99		37	794	99
7. Deferred charges:																
Prepaid insurance	$	1	048	66					$	1	006	75				
Prepaid taxes																
All other		6	627	33		7	675	99						1	006	75
8. Capital assets:																
Land	$								$							
Buildings & equipment		644	903	14						644	903	14				
Machinery and equipment																
Furniture and fixtures																
Delivery equipment																
Mine property	16	197	274	21					16	197	274	21				
Organization expense		876	309	65						876	309	65				
	$ 17	718	487	00					$ 17	718	487	00				
Less reserves for depreciation (except on land)	17	056	764	19		661	722	81	17	134	933	08		583	553	92
9. Patents																
10. Good will																
11. Other assets (describe fully):																
	$								$							
12. Total Assets					$ 1	279	965	57					$ 1	199	459	22
LIABILITIES																
13. Notes payable (less than one year)					$								$			
14. Accounts payable						2	770	40						4	327	94
15. Bonds and notes (not secured by mortgage)																
16. Mortgages (including bonds and notes so secured)																
17. Accrued expenses:																
Interest	$								$							
Taxes		6	275	00						7	275	00				
All other		21	888	41		28	163	41		3	030	50		10	305	50
18. Other liabilities (describe fully):																
	$								$							
19. Capital stock:																
Preferred stock (less stock in treasury)	$								$							
Common stock (less stock in treasury)					4	091	568	81					4	091	568	81
20. Surplus	$								$							
21. Undivided profits					2	842	517	05					2	906	743	03
22. Total Liabilities					$ 1	279	965	57					$ 1	199	459	22

Remarks

Page 4 of Statement

SCHEDULE A (See Instructions 2 and 3)

1. COST OF GOODS SOLD OTHAN THAN PURCHASE AND AS OTHERWISE PROVIDED			1. COST OF GOODS SOLD OTHAN THAN PURCHASE AND AS OTHERWISE PROVIDED		
Items	Amount (Enter on Line 2, Sch. A)		Items	Amount (Enter on Line 2, Sch. A)	
Salaries and wages	$		Salaries and wages	$	
Other costs: Support Expense	3,634	75	Other costs		
Freight to Smelter	3,779	75			
Smelting and Refining	7,000	00			
Marine Insurance	86	34			
	18,500	84			

SCHEDULE B—PROFIT FROM SALE OF STOCKS, BONDS, REAL ESTATE, ETC. (See Instruction 10)

1. Kind of Property	2. Date Acquired	3. Date Sold	4. Amount Realized	5. Cost	6. Market L. 1913, Value if Acquired Before That Date	7. Cost or Income Tax Basis Acquired Since Market L. 1913	8. Depreciation Allowable for Years Since Market L. 1913	9. Net Profit or Loss
(a) Stocks and bonds * held 2 years or less:	Mo. Day Year	Mo. Day Year						
			$	$	$	$	$	$
Total (a) transfer net profit or loss to Item 10(a)			$	$	$	$	$	$
(b) All other assets:								
			$	$	$	$	$	$
Total (b) transfer net profit or loss to Item 10(b)			$	$	$	$	$	$

* As defined in Section 2800, 1939 Act.

State law property was acquired

SCHEDULE C—COMPENSATION OF OFFICERS (See Instruction 14)

1. Name of Officer	2. Official Title	3. Time Devoted to Business	Shares of Stock Owned 4. Common	5. Preferred	6. Amount of Compensation (Enter on Line 14)
					$

SCHEDULE D—COST OF REPAIRS (See Instruction 15)

1. Items	2. Amount (Enter on Line 16)
Salaries and wages	$
Other costs	

SCHEDULE E—TAXES PAID (See Instruction 18)

1. Items	2. Amount (Enter on Line 22)
State of Delaware	$ 6,575 00
Territory of Alaska	15 00
Federal Check Tax	1 96
Capital Stock Tax	2,000 00
	8,591 96

SCHEDULE F—EXPLANATION OF LOSSES BY FIRE, STORM, ETC. (See Instruction 19)

1. Date of Property	2. Date Acquired	3. Cost or Value if Acquired L. 1913 (Enter on Line 1)	4. Property Not Insured	5. Depreciation Allowable Since Acquisition	6. Insurance and Salvage Value	7. Deductible Loss (Enter on Line 24)
		$	$	$	$	$

State law casualty was considered

SCHEDULE C—COMPENSATION OF OFFICERS (See Instruction 14)

1. Name of Officer	2. Common Title	3. Time Devoted to Business	Salaries or Share Owners: 4. Common	5. Preferred	6. Amount of Compensation Claimed as Ded. No

SCHEDULE D—COST OF REPAIRS (See Instruction 15)

1. Items	2. Amount Claimed as Ded. No
Materials and wages	
Other costs	

SCHEDULE E—TAXES PAID (See Instruction 16)

1. Items	2. Amount Claimed as Ded. No	
State of Delaware	6,875	00
Territory of Alaska	16	00
Federal Check Tax	1	96
Capital Stock Tax	2,000	00
	8,891	96

SCHEDULE F—EXPLANATION OF LOSSES BY FIRE, STORM, ETC. (See Instruction 19)

1. Kind of Property	2. Date Acquired	3. Cost or Value of Month 1, 1913, Whichever Applicable	4. Depreciation Allowable Since Acquisition	5. Depreciation Allowable Since Month 1, 1913	6. Insurance and Salvage Value	7. Deductible Loss Claimed as Ded. No

State how property was acquired

SCHEDULE G—BAD DEBTS (See Instruction 20)

1. Year	2. Bad or Doubtful	3. Bad Debts
1929		
1930		
1931		
1932		
1933		

SCHEDULE H—DIVIDENDS DEDUCTIBLE (See Instruction 21)

1. Name of Corporation	Amount of Dividends: 2. Domestic	3. Foreign

SCHEDULE I—EXPLANATION OF DEDUCTION FOR DEPRECIATION (See Instruction 22)

1. Kind of Property	2. Date Acquired	3. Age When Acquired	4. Remaining Life Upon Acquisition	5. Cost	6. Month 1, 1913, Value if Acquired Prior to That Date	7. Depreciation Allowed, Not Allowable in Prior Years	8. Depreciation Allowable This Year

AFFIDAVIT

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return, including the accompanying schedules and statements, has been examined by him and is to the best of his knowledge and belief, a true and complete return made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1932 and the Revenue Act of 1934, and the Regulations issued thereunder.

Sworn to and subscribed before me this 19 day of March, 1934.

(Title)

(Signature of Notary Public)

(Signature of Assistant Treasurer) (Date Signed) (Year)

See Instruction 23. Attach separate sheet if any of the above schedules do not provide sufficient space.

Petitioner's Exhibit 5.

(Admitted in Evidence April 30, 1940.)

U. S. BOARD OF TAX APPEALS

Div. 3, Docket 98500.

Treasury Department
Internal Revenue Service
Jan. 25, 1937.

Office of Internal Revenue Agent in Charge,
17 Battery Pl., NYC 152

In re:
Date of report: Dec. 31, 1936.
Recommendation:

Years	Additional Tax	Overassessment	Penalties
1935	$700.63		
Total			

Mother Lode Coalition Mines Co.,
120 Broadway,
New York, N. Y. 153

Sirs:

The recommendations which this office proposes to make with respect to your income tax liability as the result of a recent examination by an internal revenue agent are shown in the statement attached.

If you acquiesce in the proposed tax liability the enclosed Form 870 should be executed and forwarded to this office. Your consent to the prompt assessment and collection of any deficiency indicated will stop the running of interest on such deficiency upon a date not later than thirty days after the filing of the Form 870 properly executed.

Should you desire to make immediate payment without awaiting formal assessment and notice and demand, you should forward your remittance to the Collector of Internal Revenue at Custom House, NYC, enclosing this letter, or a copy thereof. If payment is so made the interest period will terminate on the date of payment, and interest on the deficiency at the rate of 6 per centum per annum to the date of your payment to the Collector computed from the due date of the first installment should be included in your remittance.

If you do not acquiesce in the proposed recommendations
155 you should file a protest in writing with this office within 30 days from the date of this letter, stating therein the grounds for your exceptions. Any protest so filed will be given careful consideration, and, if you so desire, you will be given an opportunity for a hearing before the recommendations are forwarded to Washington.

Arrangements will be made by this office upon your request to answer any questions which may occur to you in your review of these recommendations.

In any event please sign the enclosed form acknowledging receipt of this letter and related papers and return such form to this office.

156 Respectfully,

C. R. Krigbaum,
Internal Revenue Agent in Charge.

Enclosures:
Statement of adjustments.
Form 870.
Form of acknowledgment.
ML:kmc

Preliminary Statement.

Index to Report:
Pages 1 to 7.
Schedules 1 to 3.
Exhibits A to D.

Summary.

Year ended 12/31/35	Additional taxes $700.63

The additional tax was caused by disallowing shut-down expense applicable to prior period, less an increased accrual 158
allowed for 1936 Federal Capital Stock tax.

The changes were explained to James Dean, treasurer, who verbally assented. Form agreement was withheld pending receipt of final report.

Schedule No. 1.

Adjustments to Net Income:		Year Ending: 12/31/35
Net as disclosed by return		$63,466.00
As corrected		68,561.55
Net adjustment as computed below		5,095.55

159

Unallowable deductions and additional income;		
A. Shut-down expense	$7,784.65	
B. Donation	4.50	
Total		7,789.15

Nontaxable income and additional deductions:		
C. Capital stock accrued	$2,693.60	
Net adjustment as above		$5,095.55

. . . . . .

Schedule No. 1a

Explanation of Items:

A—Shut-down expense, $7,784.65.

Owing to controversy with Kennecott Corporation regarding charges for this expense which was finally adjusted in 1935, the records show that the above amount applicable to the year 1934 was taken as a deduction for the year 1934. Same was not allowable on the accrual basis used by the taxpayer.

161 B—Donation, $4.50.

Voucher 12/7 shows a contribution of this amount to U. S. Hospital Campaign Committed. Same not allowable under the provisions of Article 23 (o)-2 of Regulations 86.

C—Capital stock tax accrued, $2,693.60.

The taxpayer deducted $1,306.40 which represented the accrual under the Revenue Act of 1935. A new declaration was made under the Revenue Act of 1936 and tax paid for the year ended 6/30/36 of $4,000.00. The additional accrual of $2,693.60 has been allowed for 1935 in accordance with the Bureau's ruling.

162

Name of Corporation: Natural Gas Coalition Mines Corp. Pa.

Schedule No. 2

Computation of Tax for [redacted] Year Ended 12/31/35

INCOME TAX

Calendar Year Returns:

Net income	68,561.55	
Less: [redacted]		
Income tax [redacted] per cent on		9,427.21

Fiscal Year Returns:

Net income (less Credits) under 1932 Act	$	
Net income (less Credits) under 1932 Act as amended		
Income Tax at 1932 Rates: /12ths of $ at per cent		$
Income Tax at 1933 Rates: /12ths of $ at per cent		
Total tax		$
Less: Income tax paid at source		
Foreign income and profits taxes		$
Total tax assessable		
Total previously assessed		
Additional income tax to be assessed ([redacted])		$
Plus: Penalties % on $	$	
% on		
% on		
Additional income tax and penalties to be assessed (Overassessment)		$

FEDERAL PROFITS TAX

Net income	$ 68,561.55	
Less 10% of $ [redacted] Value declared in Capital Stock Return	120,237.72	
Balance subject to 5% tax	$	
Total excess profits tax assessable		$
Total previously assessed		
Additional excess profits tax to be assessed (Overassessment)		$
Plus: Penalties % on $	$	
% on		$
% on		
Additional excess profits tax and penalties to be assessed (Overassessment)		$
Total additional income [redacted] to be assessed (Overassessment)		$ [redacted]

(N.Y. Form [redacted])

Form 990-B (Rev. 1-56)
REVENUE DEPARTMENT
Internal Revenue Service

Name Mother Lode Coalition Mines Co. 05

Exhibit A Year Period ended 12/31/38

ANALYSIS OF SURPLU D RECONCILIATION OF AMENDED SURPLUS WITH AMENDED TAXABLE NET INCOME

Item	Per Books		Amended	
Surplus beginning of period	(2,967,927.74)		(2,967,927 74)	
Add				
Income per books and corrected taxable net income	43,362 21		68,561 55	
Sustainable income for period:				
Add'l accrual of 1936 Cap Stock Tax		7,693 00		
Res. for copper Ctfs. trans. to P & L.		44,883 57		
Other credits to surplus during period:				
	(88,924 565.53)		(2,850,189.02)	
Deduct				
Dividends (date):				
Income taxes Provision for 1935 tax		8,786 58		
Unknown deductions:				
Book depletion not taken		72,860 78		
Shut-down expense appl. to 1938		7,784 65		
Donation		4 50		
Other charges to surplus during period:				
			72,375 51	
Surplus end of period	(88,924,565.53)		(88,924,565.53)	

Petitioner's Exhibit 5. 163

Mother Lode Coalition Mines Co. #6

EXHIBIT B

ANALYSIS OF ACCRUED TAXES: YEAR ENDING: 12/31/35

Date	Item	Debit	Credit	Balance
12/31/34	Balance			$7,275.00
	Acrued to Profit & Loss:			
1935	Delaware Franchise tax		6,275.00	
"	Capital stock Tax		1,306.40	
"	Alaska License Tax		1,720.71	
"	Alaska Mine Tax		15.00	
"	N Y C Sales Tax		7.38	
"	Fed. Income tax, 1935		8,726.58	18,051.07
	Total			25,326.07
1935	1934 Taxes paid (cash)	7,258.38		7,258.38
12/31/35	Balance			$18,067.69

164

Exhibit C—Reserve for Copper Certificates
(Shown as credit against item 6(d) of Balance Sheet.

12/31/34	Balance			44,483.57
1935	Transferred to Profit and Loss	44,483.57		
12/31/35	Balance			none

Exhibit D—Reserve for Depletion

12/31/34	Balance			16,515,174.45
1935	Profit & Loss (1935 Depln.)		81,137.66	
12/31/35	Balance			16,596.312.11

SCHEDULE NO. 3.

STATEMENT OF TAX LIABILITY

INCOME TAX

Year	Tax previously assessed	Adjustments proposed in accompanying report Deficiency	Correct Income Tax liability
12/31/35	$8,726.58	$700.63	$9,427.21

165

Petitioner's Exhibit 6.

U. S. Board of Tax Appeals. Div. 3. Docket 98500. Admitted to evidence Apr. 30, 1940.

TREASURY DEPARTMENT

Internal Revenue Service

January 19, 1939

Office of

Internal Revenue Agent in Charge

2nd, NY Division

90 Church St., NYC.

167 Mother Lode Coalition Mines Co.,

120 Broadway,

New York, N. Y.

Sirs:

I enclose a copy of the report of the examination of your income-tax returns for the years shown below. After consideration by this office, the following adjustment of your tax liability appears to be warranted, for the reasons stated in the report:

Year: 1935 Deficiency—Income Tax: $3,475.57

If you agree to this adjustment, the enclosed form of 168 waiver should be executed and forwarded to this office promptly, in order to permit the early assessment of the additional tax and to stop the accumulation of interest. Such interest will cease 10 days after the receipt of the executed form, or upon the payment of the additional tax to the collector, whichever occurs first.

If you desire to make immediate payment of the additional tax without awaiting assessment, you should forward your remittance to the Collector of Internal Revenue at Custom House, NYC, enclosing this letter, or a copy thereof. Interest on the additional tax should be included in your remittance, computed at the rate of 6 percent per annum from the due date of the first installment to the date of payment.

If you do not agree to the proposed adjustment, you may file a protest, executed in triplicate under oath, with this

office, within 10 days from the date of this letter, stating the grounds for your exceptions. Any protest so filed will have careful consideration, and, if you so request, an opportunity for a hearing in this office will be granted you prior to final determination of any deficiency against you. This letter is not a final notice of deficiency, and this office will be pleased to answer any questions which may occur to you in your examination of the enclosed copy of the report.

Should you fail to pay the additional tax to the collector of internal revenue or to file with this office within the 10 day period mentioned either a waiver on the enclosed form or a written protest, final determination of your tax liability 170 will be made and a notice of deficiency will be sent you in accordance with the provisions of law applicable to the assessment and collection of income- and profits-tax deficiencies.

Your prompt acknowledgment of the receipt of this letter and related papers upon the enclosed form will be much appreciated.

Respectfully,

C. R. Krigbaum,
Internal Revenue Agent in Charge.

Enclosures: 171
Report of examination.
Form of waiver.
Form of acknowledgment.
HJ

#1

Mother Lode Coalition Mines Co.
120 Broadway
New York, N. Y.

PRELIMINARY STATEMENT

INDEX TO REPORT

Pages: 1-5
Schedules: 1-3
Exhibits: None

172 *Petitioner's Exhibit 6.*

SUMMARY

Year Ended	Additional Tax
12/31/1935	$3,475.57

Net Additional Tax: $3,475.57

Principal causes of additional tax:

The additional tax was caused by disallowing percentage depletion.

This report is supplemental to previous report dated December 31, 1936.

The changes were explained to James Dean, Treasurer. Agreement was not obtainable.

173

Schedule No. 1.
Year Ended 12/31/35.
Adjustments to Net Income.

Net income as disclosed by R. A. R. dated 12-31-36		$68,561.55
As corrected		93,838.43
Net adjustment as computed below		25,276.88
Unallowable deductions and additional income:		
(a) Depletion	$25,276.88	
Total		$25,276.88
Nontaxable income and additional deductions		none
Net adjustment as above		$25,276.88

174

Schedule 1-A.
Year Ended 1935.
Explanation of Items Changed.

(a) Depletion $25,276.88.

The taxpayer claimed depletion on the return of the above amount computed on the percentage basis.

The taxpayer failed to state in its return for the year 1934 the election required by Section 114(b)(4) of the Revenue Act of 1934.

The records show that all depletion pertaining to capitalized development was exhausted with the taxable year 1925. No deduction for depletion applicable to the year 1935 was therefore allowable.

Name of Corporation Mother Lode Coalition Mines Co.

Schedule No. 2

Computation of Tax for 1935 Year) ended 12/31/1935

INCOME TAX

Calendar Year Returns:

Net income.....$93,836.43

Less [redacted].....

Income tax 13 3/8 per cent on..... $12,908.78

Fiscal Year Returns:

Net income (Less Credits) under 1932 Act.....$

Net income (Less Credits) under 1933 Act as amended.....

Income Tax at 1932 Rates: /12ths of ___ at ___ per cent.....$

Income Tax At 1933 Rates: /12ths of ___ at ___ per cent.....

Total tax.....$

Less: Income tax paid at source.....$

Foreign income and profits taxes.....$ 12,908.78

Total tax assessable..... 9,437.21

Total previously assessed..... [redacted].....$ 3,475.57

Additional income tax to be assessed (O[redacted]

Plus: Penalties ___ % on $ ___ $ ___

___ % on ___ ___

___ % on ___ ___

Additional income tax and penalties to be assessed (Overassessment).....$

EXCESS PROFITS TAX

Net income.....93,836.43

Less 12½% of $ 961,301.74 Value declared in Capital Stock Return.....120,137.78

Balance subject to 5% tax.....$ ___ $ none

Total excess profits tax assessable.....

Total previously assessed.....

Additional excess profits tax to be assessed (Overassessment).....

Plus: Penalties ___ % on $ ___ $ ___

___ % on ___ ___ $ ___

___ % on ___ ___

Additional excess profits tax and penalties to be assessed (Overassessment) $ ___

Total additional income [redacted] to be assessed (O[redacted] $ 3,475.57

(N.Y. FORM 897)

Name of Corporation Mother Lode Coalition Mines Co.

Schedule No.

STATEMENT OF TAX LIABILITY

INCOME TAX

Year	Tax Previously Assessed	Adjustments Proposed in Accompanying Report: Deficiency	Overassessment	Correct Income Tax Liability
ended 12/31/ 1935	$ 9,427.23	$ 3,475.57	$	$12,902.78
Penalties				
$ 19				
$ 19				
$ 19				
TOTALS $		$	$	

EXCESS PROFITS TAX

Year	Tax Previously Assessed	Adjustments Proposed in Accompanying Report: Deficiency	Overassessment	Correct Excess Profits Tax Liability
ended 12/31/ 1936	$ None	$	$	$ None
Penalties				
$ 19				
$ 19				
$ 19				
TOTALS		$	$	$

NOTE: The amount shown in the first column of the above statements is the amount assessed on the original return except as indicated in the following summary of adjustments previously made:

Income Tax - Year 1935

Original tax $8,786.56

Deficiency assessed on Feb. 1937 ..... 700.67

or

Overassessment scheduled on ..... 19 ..... $

Net income tax previously assessed $9,427.23

Excess Profits Tax - Year 19

Original tax ..... $

Deficiency assessed on ..... 19 ..... $

or

Overassessment scheduled on ..... 19 ..... $

Net excess profits tax previously assessed ..... $

(N.Y. Form 896)

Petitioner's Exhibit 7.

(Admitted in Evidence Apr. 30, 1940.)

(Received January 27, 1939 Internal Revenue Agent in Charge, Second New York Division, N. Y. City.)

Mr. C. R. Krigbaum,
Internal Revenue Agent in Charge,
90 Church Street,
New York, N. Y.

Dear Sir: 176

Receipt is acknowledged of your letter of January 19, 1939 enclosing copy of a report of examination of MOTHER LODE COALITION MINES COMPANY income tax return for the year 1935. You advise that you propose the following adjustment of that income tax liability for the year in question.

"Deficiency Income Tax: $3,475.57"

The cause which you assign for this adjustment is as stated in the report of examination, the disallowance of the percentage depletion deduction taken in the 1935 return in the amount $25,276.88. On page 3 of the report the grounds 177
for disallowance are stated as follows:

"(a) Depletion $25,286.88

The taxpayer claimed depletion on the return of the above amount computed on the percentage basis.

The taxpayer failed to state in its return for the year 1934 the election required by Section 114 (b) (4) of the Revenue Act of 1934.

The records show that all depletion pertaining to capitalized development was exhausted with the taxable year 1925. No deduction for depletion applicable to the year 1935 was therefore allowable."

178

Taxpayer protests and takes exception to the findings in the report, as well as to the proposed adjustment set forth in your letter.

Moreover, the taxpayer claims first, that it is entitled to percentage depletion for the year 1935 and second, that it was unnecessary for it to make an election to take percentage depletion in its return filed for the year 1934 for the following reasons:

(a) Taxpayer stated in its return for the calendar year 1933 that it elected to take percentage depletion with respect to the property in question for succeeding taxable years, such election being made pursuant to the terms of Section 114 (b) (4) of the Revenue Act of 1932 which provides in part that

179

"The depletion allowance in respect of such property for *all* succeeding taxable years shall be computed according to the election thus made". (Emphasis ours)

(b) Taxpayer contends that Section 114 (b) (4) of the Revenue Act of 1934 does *not require* a taxpayer who has already elected under the 1932 Act to make *another* election, but merely gives the taxpayer that privilege. Inasmuch as taxpayer did not change the election made under the 1932 Act, it remains bound by that election, as does also the Treasury Department. Moreover, it is an axiom of law that all doubts on the point must be resolved in favor of the taxpayer and this is particularly pertinent in view of the language used in the report of the Ways and Means Committee (73d Cong., 2d Sess. H. Rept. 704) —which is quoted below:

180

"Section 114 (b) (4). Percentage depletion for coal and metal mines and sulphur; Under the Revenue Act of 1932, percentage depletion was first allowed in the case of coal, metal and sulphur mines. That act required the taxpayer to make in his 1933 return an election binding for 1934 and

subsequent years, as to whether the depletion deduction in such cases was to be computed upon a percentage basis. To avoid administrative complexity, your committee is of the opinion that the taxpayer making his first return under the bill *should be entitled to a new election* as to whether he will compute his allowance for depletion in the case of coal, metal and sulphur mines upon the percentage basis. This section of the bill so provides." (Emphasis ours)

(c) Assuming, but not admitting, for the purposes of argument, that the 1934 Act did *require* "a taxpayer making his first return under this title in respect of 182
a property" to make an election, taxpayer contends that this language must be construed to apply only to a return in respect of a property concerning which a depletion deduction can be claimed. Taxpayer's return for the year 1934 showed a *net loss* without a deduction for depletion, and the question of a deduction for depletion in that return was accordingly impossible and so immaterial. The law does not require the doing of a vain act and the filing of an election with respect to percentage depletion when a depletion deduction was impossible and when no tax was due; would have been a vain gesture. "Statutes should be construed in such a manner as to avoid 183
absurdity or injustice". (See Ralph Leslie Raymond, 34 BTA 1171 at page 1176.) Accordingly, the first return which taxpayer filed under the 1934 Act, wherein depletion deduction was claimable was the return filed for the year *1935* and in that return taxpayer *clearly stated its election* to deduct depletion on a percentage basis. Taxpayer accordingly holds that *if* it was required to make an election under the 1934 Act, *that election has been* properly made.

For the reasons above assigned, taxpayer contends that your proposed action is erroneous and your proposal should be withdrawn.

Request is respectfully made for a hearing in order that the protest of the taxpayer herein set out may be considered, at which time the taxpayer will present more in detail its position as above set forth.

Respectfully yours,

MOTHER LODE COALITION MINES COMPANY,

R. C. KLUGESCHEID,

ASC:MG Secretary.

185 Original signed by R. C. Klugescheid.

Sworn to before me this 27th day of January, 1939.

E. W. SCHWARZ,

Notary Public, Nassau County No. 1268

Cert. filed in N. Y. Co. No. 37, Reg. No. 9S98.

Commission expires March 30, 1939.

Praecipe for Record.

(Filed July 11, 1941)

186 UNITED STATES BOARD OF TAX APPEALS

B. T. A. DOCKET No. 98500.

[SAME TITLE]

TO THE CLERK OF THE UNITED STATES BOARD OF TAX APPEALS:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Second Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Circuit

Court of Appeals for the Second Circuit heretofore filed by Mother Lode Coalition Mines Company, petitioner.

1. Docket entries of all proceedings before the Board of Tax Appeals.

2. Pleadings before the Board, as follows:

(a) Petition, including annexed copy of deficiency letter.

(b) Answer of the Respondent.

3. Findings of Fact and Opinion of the Board, promulgated August 20, 1940. 188

4. Decision of the Board, entered August 26, 1940.

5. Motion to Vacate Decision and Modify the Findings of Fact and Opinion of the Board, or for Further Hearing to Supplement and Enlarge the Record, with the Board's Order of September 21, 1940, denying said Motion, stamped thereon.

6. Petition for Review together with Notice of Filing Petition for Review and Proof of Service of Notice and copy of Petition for Review. 189

7. Statement of Evidence as agreed upon and allowed including Petitioner's Exhibits 1, 3, 4, 5 (excluding page 2 of Exhibit 5, which is not material upon this appeal), Exhibit 6 (excluding pages 2, 3, and 4 of Exhibit 6, which are not material upon this appeal), and Exhibit 7, approved July 12, 1941.

8. This Praecipe.

Paul E. Shorb,
701 Union Trust Building,
Washington, D. C.
Attorney for Petitioner.

Service of a copy of the within Praecipe is hereby admitted and said Praecipe is hereby agreed to this 11th day of July, 1941.

J. P. Wenchel,
Chief Counsel
Bureau of Internal Revenue
Attorney for Respondent.

Certificate.

191 UNITED STATES BOARD OF TAX APPEALS
Washington

Docket No. 98500.

[same title]

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 92, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my
192 office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 15th day of July, 1941.

B. D. Gamble,
Clerk,
United States Board of Tax Appeals.

[fol. 85] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1941

No. 47

(Argued January 13, 1942. Decided February 5, 1942)

MOTHER LODE COALITION MINES COMPANY, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Petition to review a decision of the United States Board of Tax Appeals

The taxpayer seeks reversal of an order of the Board redetermining a deficiency in income tax for the year 1935. Affirmed.

For opinion below see 42 B. T. A. 596.

Before Swan, Augustus N. Hand and Frank, Circuit Judges

Paul E. Shorb and Charles A. Horsky, Attorneys for Petitioner; Covington, Burling, Rublee, Acheson & Shorb, of Counsel.

Samuel O. Clark, Jr., Assistant Attorney General, J. Louis Monarch, Gerald L. Wallace and Carlton Fox, Special Assistants to the Attorney General, for Respondent.

[fol. 86] SWAN, Circuit Judge:

The question presented is whether the petitioner is entitled under section 114(b) (4) of the Revenue Act of 1934, 48 Stat. 710, to take a deduction in its 1935 return for percentage depletion upon its copper mining property. Disallowance of the deduction resulted in the deficiency tax complained of. The Board has sustained the commissioner's ruling.

The petitioner was the owner of a copper mine located in Alaska and was engaged in the business of mining and selling copper. Prior to 1932 a depletion allowance in the case of metal mines had to be computed on the basis of cost or discovery value. By section 114(b) (4) of the Revenue Act

of 1932, 47 Stat. 203, a new method of computation was introduced based on a percentage "of the gross income from the property during the taxable year" (but not to exceed 50 per cent. of net income therefrom computed without allowance for depletion), and a taxpayer making a return for 1933 as to a property was required to state whether he elected to have the depletion allowance for such property "for succeeding taxable years" computed with or without reference to percentage depletion. In its income tax return for 1933 the petitioner elected percentage depletion "for the year 1933 and thereafter." The provisions of the 1932 Act were reenacted, with slight modifications, in section 114(b) (4) of the Revenue Act of 1934, 48 Stat. 710. During the year 1934 the petitioner mined no copper. Its mine was shut down but it sold certain copper on hand which it had mined in prior years. Its return for 1934 showed a net loss and made no reference whatever to depletion. The commissioner made no adjustments in the 1934 return. In 1935 the petitioner had a profit from its mining operations and in its return for that year reported [fol. 87] net income of $63,466 after deducting $25,276.88 for percentage depletion. The return stated: "Under the provisions of Section 114(b) (4) of the Revenue Act of 1932 the taxpayer elected to deduct depletion on the percentage basis for the year 1933 and thereafter." The commissioner disallowed any deduction for depletion on the ground that section 114(b) (4) of the Act of 1934, required a new election to be stated in the 1934 return,[1] and the petitioner's failure to do so made operative the requirement that depletion allowance for succeeding taxable years be computed without reference to percentage depletion. Since cost basis depletion had been fully recovered by 1925, it is conceded that no deduction on that basis was allowable.

The petitioner's first contention is that having made its election under the 1932 Act it was not required to make a fresh election under the 1934 Act. This flies directly in the

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[1] Before the Board the petitioner contended that an amended return for 1934, filed in 1939, constituted an effective election under the 1934 Act. This contention has not been urged before us, doubtless because of *Riley Co.* v. *Commissioner*, 311 U. S. 55. See also *Scaife Co.* v. *Commissioner*, 314 U. S. — (Dec. 22, 1941).

teeth of the statutory language quoted in the margin.[2] That language is mandatory. A taxpayer desiring percentage [fol. 88] depletion "shall state" his election in "his first return under this title in respect of a property." Section 1, 48 Stat. 683, makes clear that the "first return under this title" is the return for 1934. Hence, if the petitioner's 1934 return was "in respect of" the mine—a matter to be discussed later—a statement of election was required and a failure to make it deprived the petitioner of the privilege of

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[2] Sec. 114. Basis for Depreciation and Depletion.

* * * * * * *

(b) Basis for Depletion.—

* * * * * * *

(4) Percentage depletion for coal and metal mines and sulphur.—The allowance for depletion under section 23(m) shall be, in the case of coal mines, 5 per centum, in the case of metal mines, 15 per centum, and, in the case of sulphur mines or deposits, 23 per centum, of the gross income from the property during the taxable year, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property. A taxpayer making his first return under this title in respect of a property shall state whether he elects to have the depletion allowance for such property for the taxable year for which the return is made computed with or without regard to percentage depletion, and the depletion allowance in respect of such property for such year shall be computed according to the election thus made. If the taxpayer fails to make such statement in the return, the depletion allowance for such property for such year shall be computed without reference to percentage depletion. The method, determined as above, of computing the depletion allowance shall be applied in the case of the property for all taxable years in which it is in the hands of such taxpayer, or of any other person if the basis of the property (for determining gain) in his hands is, under section 113, determined by reference to the basis in the hands of such taxpayer, either directly or through one or more substituted bases, as defined in that section.

claiming percentage depletion in subsequent years. Section 114(b) (4) makes no exception in favor of taxpayers who had elected pursuant to the 1932 Act and the courts are not at liberty to imply exceptions in order to avoid harsh results. The privilege was granted "as a matter of legislative grace; the election had to be made in the manner and in the time prescribed by Congress." *Riley Co.* v. *Commissioner*, 311 U. S. 55, 58. The petitioner argues that the legislative history of the section indicates that the new election was intended to be permissive rather than mandatory because the congressional reports referred to it as "permitted" to the taxpayer instead of "required" of him. S. Rep. 558, 73rd Cong., 2d Sess. p. 36; H. Rep. 704, 73rd Cong., 2d Sess. p. 29. Such a tenuous inference can have no weight as against the unambiguous statutory language. Concededly no case supports the petitioner's contention and a prior decision of the Board had rejected it. *C. H. Mead Coal Co.* v. *Commissioner*, 38 B. T. A. 1163, reversed on an-[fol. 89] other point in 106 F. 2d 388 (C. C. A. 4).

A second string to the petitioner's bow is the contention that its return for 1935 was its "first return" within the meaning of the 1934 Act. Assuming that a fresh election was required under that Act, as we have held in the previous point, the petitioner argues that Congress must have meant by "first return" the first in which a depletion deduction could be claimed. It urges that since depletion on the cost basis had been previously exhausted and its 1934 return showed a net loss which precluded taking a depletion deduction on the percentage basis, there was no occasion to state an election in that return; accordingly, its 1935 return was the "first return" and this did elect percentage depletion. But the statutory language as construed by the Treasury Regulations will not support this contention.

Section 114(b) (4) does not speak of the "first return made by a taxpayer having net income derived from a property." It requires the election to be stated in the first return made "in respect of a property." The commissioner contends, and we think rightly, that the 1934 return was a return "in respect of" the petitioner's mine. It reported gross income derived therefrom by sales of ore previously mined and it claimed deduction of expenditures on account of the property. The commissioner's position is supported by the regulations promulgated under the 1934 Act. By Article 23(m)5 of Treasury Regulations 86 the taxpayer is

required in his first return for a taxable year beginning after December 31, 1933 to "state as to each property with respect to which the taxpayer has any item of income or deduction whether he elects to have the depletion allowance for each such property for the taxable year computed with or without reference to depletion allowance." Being phrased in general terms, the statute is an appropriate subject for interpretative administrative regulation. *Hel-* [fol. 90] *vering* v. *Reynolds Co.*, 306 U. S. 110, 114. In our opinion Article 25(m)5 as above quoted is a reasonable one.[3] Percentage depletion is computed upon gross income although the permissible allowance therefor is limited to a percentage of the taxpayer's net income. Cost depletion is not so limited. Therefore a taxpayer who reports gross income from a mining property may properly be required to state his election as to the method of computing depletion allowance for such property, even though he can get no benefit in that year from electing percentage depletion, because the statute makes his election controlling in future taxable years and imposes upon him an election of the method of cost depletion if he fails to state an election of percentage depletion. It must be obvious, we think, that if the petitioner's mine had had depletable cost in 1934, the petitioner would have been put to an election in its return for that year although no net income was reported. The fact that in the case of certain taxpayers, like the petitioner, cost depletion has previously been exhausted can have no bearing, so far as we are able to see, upon either the construction of the statutory phrase "first return * * * in respect of" the property or the reasonableness of the administrative interpretation given it by the regulation under discussion. Moreover, the construction for which the petitioner contends would introduce administrative difficulties. If a return showing no net income is not a "first return" when filed, does it become one years later if the commissioner shall make adjustments which result in disclosing net income? Cf. *Kehoe-Berge Coal Co.* v. *Commissioner*, 117 F. 2d 439 (C. C. A. 3). Section 114(b)(4)

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[3] The same construction of identical language in the Revenue Acts of 1936, 1938 and the Internal Revenue Code has been repeated in Article 23(m)5 of Treasury Regulations 94 and 101 and section 19.23(m)5 of Treasury Regulations 103.

will be much simpler in administration under the commissioner's interpretation. Tax officials will look first to the [fol. 91] taxpayer's 1934 return. If this reports items of gross income from a mining property they need look no further to ascertain the method of computing depletion allowance for such property in future years; if it does not, then they must find the "first return in respect of" such property in some later year. In our opinion the Board correctly held that the petitioner was required to state its election in its 1934 return.

This view is not the one adopted by the Third Circuit in *Pittston-Duryea Coal Co. v. Commissioner*, 117 F. 2d 436. That opinion, however, does not discuss the phrase "first return in respect of a property" nor Article 23(m)5 of Treasury Regulations 86. For the reasons already stated we must with all deference decline to follow it.

Order affirmed.

[fol. 92] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 21st day of February, one thousand nine hundred and forty-two.

Present: Hon. Thomas W. Swan, Hon. Augustus N. Hand, Hon. Jerome N. Frank, Circuit Judges.

MOTHER LODE COALITION MINES COMPANY, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appeal from the United States Board of Tax Appeals

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said Board in accordance with this decree.

D. E. Roberts, Clerk, by A. M. Bell, Deputy Clerk.

[fol. 93] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Mother Lode Coalition Mines Co. v. Commissioner of Int. Revenue. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Feb. 21, 1942. D. E. Roberts, Clerk.

[fol. 94] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 95] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 8, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, limited to the first question stated in the Government's memorandum, and the case is placed on the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.